

BULKY DOCUMENTS

(exceeds 300 pages)

Proceeding/Serial No: 91161373

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Title: Opposer's Notice of Filing of Testimony
Deposition

Part 4 of 4

Nothing identified as #92

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AMERICAN ITALIAN PASTA
COMPANY,

Applicant,

vs.

Opposition No. 91-161,373

BARILLA G. E. R. FRATELLI-
SOCIETA PER AZIONI,

Opposer.
~~~~~

DEPOSITION OF

ANN WILLOUGHBY

November 3, 2006  
3:10 p.m.

Law Offices of Hovey Williams LLP  
2405 Grand Boulevard  
Kansas City, Missouri

Bobbi J. Pyle, Certified Court Reporter for the State of Missouri

APPEARANCES

FOR THE APPLICANT:

ROTHWELL, FIGG, ERNST & MANBECK

BRIAN E. BANNER, ESQUIRE

1425 K Street NW, Suite 800

Washington, DC 20005

FOR THE OPPOSER:

HOVEY WILLIAMS, LLP

THOMAS H. VAN HOOZER, ESQUIRE

CHERYL L. BURBACH, ESQUIRE

2405 Grand Boulevard, Ste. 400

Kansas City, MO 64108-2519

ALSO PRESENT:

MS. KATIE GRAY

## STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the applicant and counsel for the opposer that this deposition may be taken in stenographic shorthand by Bobbi J. Pyle, Certified Court Reporter, and afterwards reduced into typewriting.

IT IS FURTHER STIPULATED AND AGREED by and between the parties that presentment to the attorneys of record of a copy of this deposition shall be considered submission to the witness for signature within the meaning of the Trial Procedure and Introduction of Evidence 703.01(j) -- 37 CFR 2.123(e)(5); but shall in no way be considered as a waiver of the witness's signature, to be signed by the witness at any time before or at the trial of this case, and if not signed by the time of trial it may be used as if signed.

IT IS FURTHER STIPULATED AND AGREED between counsel for the respective parties hereto that the deposition of the witness may be signed before a notary public.

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1 Deposition of Ann Willoughby

2 November 3, 2006

3 PROCEEDINGS

4 (The proceedings were scheduled to  
5 begin at 2:00 p.m. Proceedings actually  
6 began at 3:10 p.m.)

7 ANN WILLOUGHBY, of lawful age,  
8 being first duly sworn to tell the truth, the  
9 whole truth, and nothing but the truth,  
10 deposes and says on behalf of the opposer, as  
11 follows:

12 THE REPORTER: Do you solemnly  
13 swear that the testimony you are about to  
14 give in the cause pending will be the truth,  
15 the whole truth, and nothing but the truth?

16 THE WITNESS: I do.

17 DIRECT EXAMINATION

18 BY-MS.BURBACH:

19 Q. Would you please state your name  
20 for the record?

21 A. Ann Willoughby.

22 Q. Ann, have you ever been deposed  
23 before?

24 A. Yes.

25 Q. More than once?

1 A. Once or twice.

2 Q. Okay. I'll just go over a few  
3 ground rules that you're probably aware of,  
4 but just to refresh your memory.

5 I would ask that you let me  
6 complete questions before you answer.

7 A. Okay.

8 Q. Refrain from saying "um-hum" or  
9 shrugging. Make sure you say "yes" or "no"--

10 A. Okay.

11 Q. --so the court reporter can take  
12 it down. It's important that we don't try  
13 to speak over each other.

14 A. Okay.

15 Q. So try to do that. And you  
16 understand you're required to tell the truth,  
17 you're speaking under oath?

18 A. Yes.

19 Q. And this would be as if you were  
20 testifying at a trial?

21 A. Yes.

22 Q. I want to ensure you understand  
23 the question so if at any point you don't  
24 understand my question, feel free to ask me  
25 to clarify.

1                   And lastly, if you need a break,  
2                   just let me know and we'll take a break.

3                   A.       Okay.

4                   Q.       All right. Have you used any  
5                   other names other than Ann Willoughby?

6                   A.       I've used Ann Willoughby Beresford  
7                   before.

8                   Q.       Will you spell that?

9                   A.       Yes. B-e-r-e-s-f-o-r-d.

10                  Q.       And could you give us your  
11                  address?

12                  A.       Yes. 1025 West 60th Terrace,  
13                  Kansas City, Missouri 64113.

14                  Q.       At this point, I want to go  
15                  through your education.

16                  A.       Okay.

17                  Q.       Where and when did you graduate  
18                  high school?

19                  A.       I graduated in 1964 in Jackson,  
20                  Mississippi.

21                  Q.       And where did you -- You went to  
22                  college afterwards, I assume?

23                  A.       Yes, um-hum.

24                  Q.       Where did you go?

25                  A.       University of Southern Mississippi

1 in Hattiesburg.

2 Q. And did you receive a degree from  
3 there?

4 A. I did, BSA in design and fine  
5 arts.

6 Q. Do you have any other degrees?

7 A. No.

8 Q. Do you have any other classes or  
9 education you've taken since then?

10 A. No, but I've taught.

11 Q. Tell me about that.

12 A. I've taught at the University of  
13 Kansas and I've taught--

14 Q. What did you teach there?

15 A. I taught design.

16 Q. And when did you do that?

17 A. I did that from 1980 to 1986.

18 And I've taught courses all around the  
19 country, but, like, at the Art Institute and  
20 things like that, like, seminars or maybe a  
21 five-week course.

22 Q. And you said it was a bachelor's  
23 of fine arts, right?

24 A. Yes.

25 Q. Okay. After you graduated --

1 we'll go through your employment history now.

2 A. Okay.

3 Q. So if you would tell me where you  
4 began working after you graduated from college  
5 up to the present day.

6 A. Okay. Well, actually when I was  
7 in college, I ran an advertising department  
8 for a department store in Hattiesburg for  
9 three years.

10 When I graduated, I came to Kansas  
11 City and I started working at Macy's in their  
12 advertising department doing merchandising and  
13 design and fashion illustration, you know,  
14 basically my background.

15 And after that, I started my own  
16 business.

17 Q. So that would have been in 1965,  
18 approximately; is that right?

19 A. I graduated from high school in  
20 '64 and from college in '69.

21 Q. Okay. And so you worked at Macy's  
22 in '69?

23 A. Oh, it was probably '69, '70-ish,  
24 you know, until, like, '71 or so.

25 Q. Okay. And then you started a

1 company?

2 A. In about '72, yes.

3 Q. What was the name of that company?

4 A. I was freelancing -- I had  
5 children -- Ann Willoughby Design, but then I  
6 officially started my company in 1978.

7 Q. Is that where you've been ever  
8 since?

9 A. Yes, sir -- yes, ma'am.

10 Q. What's your title with the company?

11 A. I'm the CEO and creative director.

12 Q. And have you had any other titles  
13 there since the company has been formed?

14 A. Well, no.

15 Q. How many employees does your  
16 company currently have?

17 A. We have 19.

18 Q. Are you a member of any  
19 professional organizations?

20 A. Yes. I'm a former national board  
21 member of the AIGA, which is the professional  
22 association for design in the U.S.

23 I'm now on the AIGA center for  
24 brand design.

25 I'm on the center for sustainable

1 design.

2 I'm an advisory board member,  
3 chair, of the AIGA here.

4 And I'm an editorial board person  
5 on a couple magazines. HOW Magazine is one  
6 and it's one of the AIGA magazines.

7 (Deposition Exhibit-95 was marked  
8 by Ms. Burbach for identification.)

9 Q. (By Ms. Burbach) Okay. I'm going  
10 to hand you what's been marked as Exhibit 95.

11 A. Okay.

12 Q. I know opposing counsel already has  
13 a copy. This will help us both go through  
14 it.

15 You said you were on the AIGA  
16 national board of directors?

17 A. I'm a former.

18 Q. Former?

19 A. Yeah. I just went off the board  
20 last year.

21 Q. Okay. Can you identify what  
22 Exhibit 95 is by the way?

23 A. You mean this?

24 Q. Um-hum.

25 A. It's American Italian Pasta--

1 Q. No, no, I mean the title. What  
2 is this document I handed you?

3 A. This is basically my r, sum,.  
4 That's what I would call it.

5 Q. When you were on the board of  
6 directors at AIGA, what were your  
7 responsibilities on the board?

8 A. Well, I did a few things. I  
9 chaired a design and business conference in  
10 New York two years ago and I helped start a  
11 design program at the Harvard Business School  
12 for designers.

13 And several other things, but those  
14 are the two big initiatives I was in charge  
15 of.

16 Q. Did you say you were currently on  
17 the national board center for brand  
18 experience?

19 A. Yeah, brand experience.

20 Q. And what is that?

21 A. It's a board, a national board  
22 that reaches across different disciplines and  
23 we help educate companies and educators and  
24 professionals about branding.

25 Q. Okay. And the AIGA center for

1 sustainable design, can you tell me what that  
2 is?

3 A. Well, that's a new board that I'm  
4 on, because I really believe in sustainability  
5 and I'm working with a lot of big companies  
6 now about how they talk about sustainability,  
7 companies like HP and Harmon Miller, Monterey  
8 Bay Aquarium, companies like that.

9 Q. And you said you were on the  
10 editorial board of a couple magazines?

11 A. HOW Magazine.

12 Q. What is HOW Magazine?

13 A. HOW Magazine is a design trade  
14 publication marketed to designers.

15 Q. What are your responsibilities?

16 A. Look at articles, help guide with  
17 editorial content, find designers to be in  
18 the magazine, things like that.

19 Occasionally I will write something  
20 for them.

21 Q. Okay. I notice in your r, sum, it  
22 says you're associated with the Kansas City  
23 Ad Club?

24 A. I'm a member.

25 Q. And what is the Kansas City Ad

1 Club?

2 A. Basically it's an association of  
3 advertising professionals in the city and it's  
4 networked all across the country.

5 Q. Have you published any articles?

6 A. I've written a few. I write  
7 probably one every year or so for, like, a  
8 magazine like CA, which is Communication Arts.

9 Q. Okay.

10 A. And I also -- I think I've written  
11 a couple for Ingram's or for magazines here  
12 in Kansas City, just once in a while if I'm  
13 asked to do so.

14 Q. I notice on the second page  
15 through the -- it looks like four pages in,  
16 there are a number of awards on there.

17 A. Right.

18 Q. I won't ask you to go through all  
19 of them, but can you tell me what these  
20 awards are?

21 A. Well, it's a variety of things.  
22 Often I'm a judge for these competitions and  
23 sometimes -- we usually don't judge the  
24 things that we are entering, but our company  
25 has won a lot of awards for design.

1                   And I'm very involved in the AIGA  
2                   and some of the local design awards, just  
3                   really kind of helping them guide what should  
4                   be rewarded, not just good design, but what's  
5                   good strategy and things like that.

6                   Q.       Who usually gives these awards?

7                   A.       Well, it depends. Sometimes  
8                   they're given by magazines, like, Communication  
9                   Arts.

10                  HOW has one. AIGA probably has  
11                  the most prestigious in the country.

12                  And there are, you know, the  
13                  Advertising Federation which is here in Kansas  
14                  City, they give them. They have Omni's, and  
15                  there's several others.

16                  Q.       Are you nominated for an award, is  
17                  that how you receive them usually?

18                  A.       Some cases you're nominated and  
19                  some cases you enter.

20                  Q.       Who nominates, typically?

21                  A.       Well, it depends on what it's for.  
22                  Like, I was nominated last year to be an  
23                  AIGA design fellow and you don't nominate  
24                  yourself for that, other people do. And then  
25                  I was selected.

1                   Sometimes they ask you -- they'll  
2                   call and say, "Would you please enter a  
3                   certain book you designed? We think it will  
4                   be well received," and I do, and it wins.  
5                   Sometimes I'm invited and sometimes we just  
6                   enter.

7                   Q.       What's an AIGA fellow?

8                   A.       Well, should be a "fellowette" or  
9                   some-thing, right?

10                  It is an award given to designers  
11                  across the country in major cities who are  
12                  outstanding. And there's probably 30 right  
13                  now around the country, something like that.

14                  Q.       So do your peers nominate you,  
15                  then?

16                  A.       Yes, yes, nominated by peers.

17                  What it means is that you've done  
18                  something nationally and also in the community  
19                  to advance design and design thinking.

20                  Q.       Have you been an expert witness  
21                  before in a lawsuit?

22                  A.       Yes.

23                  Q.       Can you tell me about that, what  
24                  case it was?

25                  A.       It was in June of 1994, I was an

1 expert witness in the field of brand design  
2 on behalf of Luzier.

3 It was in the case of Bath and  
4 Body Works vs. Luzier. It was in the United  
5 States District Court for the Southern  
6 District of Ohio.

7 Q. Do you recall if that case  
8 involved a trademark infringement claim?

9 A. Yes, it did.

10 Q. And were you qualified as a  
11 witness -- I mean, were you certified as a  
12 witness in that case?

13 A. Yes, yes. And I testified.

14 Q. An expert witness, I should say.

15 A. Yes.

16 Q. Let's talk about your company a  
17 little bit.

18 A. Okay.

19 Q. What does Willoughby Design Group  
20 do?

21 A. We're involved in branding and we  
22 do two kinds of projects.

23 We help start-ups, entrepreneurs,  
24 small business people, like, Einstein Bagels,  
25 we helped them start that.

1                   And we've helped a lot of  
2                   companies, like, Three Dog Bakery start their  
3                   business and we help them with their business  
4                   plans, with their identity, with their  
5                   environments. And we design those things.

6                   And the other kind of companies we  
7                   work with are large companies like Hallmark  
8                   or Nestle's who have initiatives and they'll  
9                   ask us to help with those.

10                  They usually have something to do  
11                  with innovation where they have a new product  
12                  or -- recently we've been doing some new  
13                  product development for Nestle's centered  
14                  around nutrition, which is a big thing now.

15                  We just help them develop  
16                  strategies, the product concepts, the naming,  
17                  the design of the bottles, things like that.

18                  Q.     Do you also help re-design  
19                  packaging or products?

20                  A.     Yes. One of our largest clients  
21                  for the past, I don't know, 10 or 15 years  
22                  has been Interstate Brands.

23                  We help them with all of the  
24                  strategy on all of their brands, both their  
25                  cakes and the bread brands. And we help --

1           totally updating them every year, new  
2           strategies.

3                       I know last year we came out with  
4           some whole wheat white bread and some new  
5           products.

6           Q.        Could you identify some of the  
7           brands that you're working on?

8           A.        Baker's Inn is one. Wonder is  
9           one. We do Dolly. We do Twinkies. We  
10          even worked on the Will Ferrell -- the design  
11          of his outfit a little bit.

12                    So we're involved in some of those  
13          promotions, as well.

14          Q.        Have you had other customers or  
15          clients that you've worked with in the food  
16          industry?

17          A.        We've done a little bit of work  
18          with Frito Lay. We've done work with LPK  
19          and P&G.

20                    We haven't worked for them in  
21          probably several years, but we used to do a  
22          lot of work with P&G.

23          Q.        I think you touched on this a  
24          little bit, but do you -- for these  
25          companies, do you consult with them regarding

1 the packaging of their products?

2 A. Yes.

3 Q. Do you consult with them regarding  
4 shelf placement?

5 A. I'm not sure--

6 Q. Like, in a grocery store or  
7 location?

8 A. Do you mean in terms of how their  
9 products are sold in or how they are  
10 displayed on the shelf?

11 Q. Well, you tell me the difference.

12 A. Okay. We're not involved in the  
13 product placement because that's a whole  
14 different thing figuring out the allotments  
15 for your shelf space.

16 Although sometimes we do encourage  
17 companies to put their products together so  
18 that they're not all spread out all across  
19 the store. Sometimes we'll do, like, an end  
20 cap or something so that it really makes the  
21 product -- the way it looks together, it  
22 really reads a lot better.

23 But normally what we do, though,  
24 is when we design products for the shelf, we  
25 make sure they really stand out and they're

1 true to the brand and, you know, the  
2 identity, the information hierarchy, the icons,  
3 everything, you know, is fresh and it's easy  
4 to read and easy for consumers to see what's  
5 in it and how it works.

6 And sometimes we'll -- for example,  
7 right now bread manufacturers are starting to  
8 make smaller loaves of bread. I don't know  
9 if you've seen that or not. But now that  
10 means sometimes they stand up and set on  
11 their end.

12 So we have to, like, figure out  
13 how to design them so they work better for  
14 the consumer.

15 So we're constantly looking at new  
16 materials and new ways to package things so  
17 they're fresher and, you know, more appealing  
18 to the consumer.

19 Q. How do you decide how to package  
20 something? What kind of -- do you use  
21 research or studies? What would you use to  
22 decide?

23 A. We have a lot of suppliers we work  
24 with in the packaging industry and they're  
25 always calling on us and saying, "Have you

1           seen this new container and have you thought  
2           about this?"

3                       And a lot of times our clients  
4           will -- like, P&G, for example, they have all  
5           their research labs and everything so they're  
6           very well informed, as well.

7                       But if we're working with a new  
8           company, we have to do all the research and  
9           find everything and have it sourced.

10                      We just did a big project where we  
11           had to have, like, seven different kinds of  
12           bags made and they had to be made in the  
13           orient and we had to go back and forth to  
14           make sure they were right. We do that when  
15           we have to.

16                      (Deposition Exhibit-93 was marked  
17           by Ms. Burbach for identification.)

18                      Q.        (By Ms. Burbach) Okay. I'm going  
19           to hand you what is marked as Exhibit 93.

20                      I'm going a little bit out of  
21           order here, but can you tell me what that  
22           document is?

23                      A.        This is a subpoena.

24                      Q.        Is this the subpoena that you  
25           received in this case?

1 A. Yes, it is. Yes, it is.

2 Q. And are you here testifying today  
3 on behalf -- or in response to the subpoena?

4 A. Yes, I am.

5 (Deposition Exhibit-94 was marked  
6 by Ms. Burbach for identification.)

7 Q. (By Ms. Burbach) And I will also  
8 hand you what is marked Exhibit 94. Do you  
9 recognize this document?

10 A. Yes. This is the notice of  
11 deposition.

12 Q. Did you receive that?

13 A. Yes, I did.

14 Q. On the notice of deposition--

15 A. Um-hum.

16 Q. --it says that the deposition was  
17 to take place on November 2, 2006. Do you  
18 see that?

19 A. Commencing on November 2nd, yes.

20 Q. Is it your understanding that we  
21 re-scheduled for today--

22 A. Yes.

23 Q. --to assist opposing counsel with  
24 schedules?

25 A. It was supposed to be at 2:00,

1 right?

2 Q. Right.

3 A. It didn't start until 3:15, okay.

4 Q. Yes, it didn't start at 10:30.

5 You understood it was supposed to be today--

6 A. Right.

7 Q. --and we re-scheduled--

8 A. We re-scheduled--

9 Q. --to accommodate--

10 A. --while I was here, yes.

11 Q. Okay. I just wanted to make sure.

12 And the subpoena also reflects November 2nd?

13 A. Yes.

14 Q. Have you prepared for this

15 deposition today?

16 A. Yes, I have.

17 Q. What have you done to prepare for  
18 the deposition?

19 A. Well, what I did is I re-read the  
20 case that I did earlier with American Italian  
21 Pasta and then I went to the grocery store  
22 and just really kind of spent some time in  
23 the sections with the pasta, and I looked in  
24 some other sections to look for similar, you  
25 know, ideas just to refresh myself.

1 Q. Okay. Let's--

2 A. That's what I've done.

3 Q. --break it down a little bit. You  
4 said you re-read the case that American  
5 Italian Pasta was involved--

6 A. Right. This was the puffery case  
7 and I re-read everything that I had written  
8 in that.

9 Q. Are you referring to the American  
10 Italian Pasta Company vs. New World Pasta?

11 A. Yes, I am. That's exactly right.  
12 It's over here. I read you that. This is  
13 the one that I prepared.

14 Q. So is this the report you prepared  
15 in that case?

16 A. Um-hum, right.

17 Q. Can you tell me what you recall  
18 about that case, what was involved?

19 A. Yes. It was a case about  
20 "America's Favorite Pasta" and it was about  
21 puffery. It was about the statement.

22 Would you like for me to talk  
23 about my conclusion?

24 Q. We'll get there. I just wanted to  
25 make sure you--

1 A. Okay.

2 Q. And for the record, it was  
3 American Italian Pasta vs.--

4 A. Well, I have it here. New World  
5 Pasta, February 21, 2003.

6 Q. And it was pending before the  
7 Western District of Missouri?

8 A. That's correct, yes.

9 Q. Okay. So you said you re-read  
10 your report for that case?

11 A. Yes.

12 Q. You said you went to the grocery  
13 store.

14 A. Yes, yesterday.

15 Q. Okay. Which grocery store did you  
16 go to?

17 A. I went to Miner's in my  
18 neighborhood. I think it's called the  
19 Brookside Grocery Store, Miner's. Is that  
20 what it's called now? It may not be.

21 Anyway, it's my local grocery store  
22 that's in Brookside.

23 Q. Okay. And you said that you went  
24 and visited the pasta aisle?

25 A. I visited the Pasta aisle and

1 several other aisles to look for similar  
2 cases.

3 Q. Did you observe any of Mueller's  
4 pasta there?

5 A. It was not there.

6 Q. Did you witness any pasta sold by  
7 Barilla's there?

8 A. It was not there.

9 Q. Okay. And before we go any  
10 further, have you ever designed packaging for  
11 American Italian Pasta Company?

12 A. No.

13 Q. Did you ever design packaging for  
14 Best -- for the Mueller's brand for Best  
15 Foods?

16 A. No.

17 Q. Have you ever worked for American  
18 Italian Pasta Company?

19 A. No.

20 Q. Are you familiar with American  
21 Italian Pasta Company's products?

22 A. A little bit.

23 Q. Are you familiar with the brand  
24 sold under the name Mueller's?

25 A. Yes, I am.

1 Q. How did you come to be aware of  
2 that?

3 A. That happened when I did the case  
4 in February of 2003.

5 (Deposition Exhibit-96 was marked  
6 by Ms. Burbach for identification.)

7 Q. (By Ms. Burbach) I'm going to  
8 hand you what's been marked as Exhibit 96.

9 A. Okay. Same one I have, right?

10 Q. Yes. And can you identify what  
11 that is?

12 A. Yes, this was the report that I  
13 filed.

14 Q. And I thought it might be simplest  
15 for us to kind of go through it.

16 A. Okay.

17 Q. And feel free to take time to read  
18 each paragraph as we go along.

19 A. Okay.

20 Q. Has anything changed in paragraphs  
21 1 through 5 since the date that you signed  
22 this report?

23 A. I'm just a little bit older is  
24 all.

25 (Laughter.)

1 Q. (By Ms. Burbach) You already  
2 testified about paragraphs 6 and 7.

3 Paragraph 8 states that your  
4 compensation for your work in this matter is  
5 at the rate of \$350 per hour. Has that  
6 changed--

7 A. No.

8 Q. --for purposes of testifying--

9 A. No.

10 Q. --on behalf of today?

11 A. No.

12 Q. In preparing for your deposition  
13 today, did you review again the complaint  
14 counterclaim motions or any of the documents  
15 identified in paragraph 9?

16 A. I didn't review, like, the really  
17 thick ones, but I reviewed this report is  
18 what I reviewed.

19 Q. Okay. Paragraph 11 you visited  
20 grocery chains in the Washington, D.C. area;  
21 Easton, Maryland; Kansas City; and a  
22 commissary in Leavenworth.

23 A. Yes.

24 Q. Do you recall that?

25 A. Yes, I do.

1           Q.       Do you recall when you went and  
2           visited--

3           A.       It was probably within a couple  
4           months of writing this report.

5           Q.       And in paragraph 12, you reviewed  
6           literature, promotions, advertising, and  
7           packaging developed by Mueller over the past  
8           100 years?

9           A.       Yes, I did.

10          Q.       Is some of that summarized in the  
11          attachments to this report?

12          A.       Yes. There are some images.

13          Q.       Let's move ahead to paragraph 15.

14          A.       Okay.

15          Q.       Could you read that for me?

16          A.       Yes. "It is my opinion that  
17          Mueller uses the words 'America's Favorite  
18          Pasta' as pure puffery. I will provide  
19          examples and historical insight that shows  
20          consumers not only know the difference between  
21          puffery and fact, but also embrace puffery as  
22          a shared cultural and emotional tradition of  
23          commerce."

24          Q.       Has your opinion changed at all  
25          about that statement since the date you

1 signed this report?

2 A. No.

3 Q. And I guess we could probably save  
4 some time here. Is there anything in this  
5 report that you no longer agree with since  
6 the date that you signed it?

7 A. No, I agree with everything.

8 Q. Let's go through the attachments.

9 A. Okay.

10 Q. I see the first attachment to this  
11 report is your CV at the time.

12 A. Um-hum.

13 Q. And the second one is -- what is  
14 that?

15 A. I'm not sure. I think it's just  
16 a reprint of an article that I wrote for --  
17 I believe it was Ingram's, yes.

18 Q. And would you look at Exhibit A to  
19 that report?

20 A. Yes.

21 Q. What is this?

22 A. These were photographs that we  
23 took. I'm not sure exactly where, but it  
24 may have been at the commissary in  
25 Leavenworth or it may have been one that I

1                   took when I was back on the east coast.

2                   Q.       Do you believe you took these  
3                   photographs in 2003?

4                   A.       I'm sure I would have then.

5                   Q.       And do you see in the bottom  
6                   right-hand corner of the photo the Mueller's  
7                   products?

8                   A.       Yes.

9                   Q.       Do you recall if those products  
10                  bore the slogan "America's Favorite Pasta"?

11                  A.       Gosh, there's so little there. I  
12                  think -- I'm almost positive -- if I could  
13                  go back here and look at the other ones, I  
14                  could tell you. So just give me a second  
15                  here.

16                  Q.       Sure.

17                  A.       I need a magnifying glass. You're  
18                  talking about the ones right here (indicated)?

19                  Q.       That's right.

20                  A.       Okay.

21                  Q.       Um-hum.

22                  A.       They're so tiny I can't really  
23                  see, but I think--

24                  Q.       I think if you look at the exhibit  
25                  I gave you, there will be a larger--

1 A. Oh, okay. Right here (indicated)?

2 Q. Right.

3 A. Okay. Yeah, this would have been  
4 this one. I see it now. Yes, it did.

5 Q. Let's talk about the attachment  
6 you're actually looking at right now.

7 A. Okay.

8 Q. Can you tell me what it is?

9 A. Yes. This is a historical  
10 timeline of the Mueller's packaging starting  
11 in 1937 through 2003.

12 Q. And did you create this exhibit?

13 A. Yes, I did.

14 Q. And can you explain what the  
15 purpose of this timeline was?

16 A. Yes. The reason I did this was  
17 to illustrate sort of the essence of the  
18 Mueller's brand, not only their identity,  
19 their hierarchy of information, but also their  
20 trade dress in terms of color, in terms of  
21 words, like, "America's Favorite Pasta," what  
22 the product is, and see how it evolved over  
23 time.

24 Q. I notice that you, in 1914,  
25 referred to that as the flag brand. Can you

1 explain what that is?

2 A. I'm sorry, 19, what?

3 Q. 1914. I believe it's on that page  
4 there (indicated).

5 A. Okay. That was called the flag  
6 brand because it had a flag on it and it was  
7 patriotic.

8 Q. Okay.

9 A. And the flag was one of the  
10 symbols that was part of the trade dress.

11 Q. So is that flag below 1914 just an  
12 enlarged picture of what came off of--

13 A. Yes. If you look at -- you know,  
14 if you -- back then, of course, this was in  
15 such early days of consumer products, it was  
16 a long time ago, but the Mueller packaging  
17 was red, white, and blue, but it did have a  
18 flag on it.

19 And that was one of the primary  
20 symbols. And I would have imagined that in  
21 1914 it was probably a good idea to be  
22 patriotic.

23 Q. Looking at the item identified in  
24 1930--

25 A. Um-hum.

1 Q. --do you recall what that was?

2 It's identified right above that.

3 A. Yes. This is a recipe that -- I  
4 don't know if it would have been in a  
5 magazine or not. I don't recall. But it  
6 was suggestions on how to serve the product.  
7 This was an American product. I know that a  
8 lot of Jewish people used to use it in New  
9 York. I've heard a lot of people talk about  
10 it. It was basically known as a macaroni  
11 product.

12 Q. And below the designation 1930,  
13 there are a couple items there. Do you see  
14 that?

15 A. Yes. It says, "Look for the red,  
16 white, and blue package, America's largest  
17 selling brand."

18 Q. And did those appear on this  
19 recipe booklet?

20 A. Yes, it did. It's up in the  
21 right-hand corner up here and it's on the  
22 bottom of this page here (indicated), "Look  
23 for the red, white, and blue package."

24 Q. Okay. 1940's, do you see that  
25 reference there?

1 A. I sure do.

2 Q. And it says, "Factory modern,  
3 clean, American"?

4 A. Um-hum.

5 Q. Why did you think that was  
6 important to pull out?

7 A. I think, again, it was just sort  
8 of the American identity of the product.  
9 That's one of the qualities of the identity  
10 that remained consistent.

11 Q. Was that what you were trying to  
12 show with this timeline?

13 A. Yes. And also back then, you  
14 know, products weren't always safe and clean  
15 and wonderful.

16 And so this was a time before the  
17 '50s when it was very important that you had  
18 trust in a brand. You knew that it was  
19 something that was of the highest quality.

20 Q. Okay..

21 A. And, of course, this was a time  
22 when people cooked from scratch so they had a  
23 lot of recipes and a lot of information.

24 Q. Let's move ahead to 1997-'98.

25 A. Okay.

1           Q.       And what items from that packaging  
2                   and coupon did you think conveyed the  
3                   American theme you had spoken about earlier?

4           A.       Well, I think it's the heritage.  
5                   You know, over time a brand builds up equity  
6                   in its, you know, brand assets and I would  
7                   -- you know, Mueller has been using the red,  
8                   white, and blue practically since the  
9                   beginning if you look at this image here.

10                   But they're really starting to call  
11                   out they're "America's Favorite Pasta," which,  
12                   by the way, was first on their package back  
13                   here in 1950. I found one that shows it  
14                   right here, "America's Favorite Pasta." So  
15                   they've been using that for quite awhile.

16                   And then they note here that it's  
17                   been their favorite pasta for over 125 years.  
18                   So that really talks about the longevity of  
19                   the brand.

20           Q.       As it appears on the box in 1998--

21           A.       Um-hum.

22           Q.       --do you see where it says,  
23                   "America's Favorite Pasta"?

24           A.       I sure do.

25           Q.       Is that a trademark?

1           A.       Yes, it is a trade -- it's part  
2 of the trade dress of the Mueller's brand.

3           Q.       And looking at this box, what is  
4 -- can it have more than one trademark on  
5 the box?

6           A.       Yes, yes, of course, it can. And  
7 it's how things are used over time and it's  
8 what the consumer has come to know as sort  
9 of the whole brand, the trade dress of the  
10 package, because if you change it too much,  
11 people won't know what it is, and they won't  
12 buy it.

13                   I know from some of the work we  
14 do with Wonder Bread, we just re-did their  
15 identity. You can't change it very much. And  
16 so usually what these companies did, they  
17 spent a lot of time doing equity tests with  
18 a consumer finding out what is it about the  
19 blue -- the top that's blue, the bottom is  
20 blue, the red stripe, "America's Favorite  
21 Pasta," just the components and the hierarchy  
22 and why they're important.

23           Q.       Can you speak about the hierarchy?  
24 What do you mean by that?

25           A.       Well, the first thing that -- when

1           you see this package, the first thing a  
2           person sees is color. That's the way the  
3           emotions work. It's not necessarily a  
4           rational thing. So you go to color first.  
5           That's the way you identify a brand.

6                     And then the next thing would be  
7           probably the name. You know Mueller's is the  
8           name you trust.

9                     And then you begin to look at the  
10          way all the other elements come together.

11                    Like, for example, "America's  
12          Favorite Pasta" works a lot like "Breakfast  
13          of Champions " for Wheaties or something.

14                    It's just something they're known  
15          for. Or with Coke, "It's the real thing,"  
16          you know. It's part of their brand. And  
17          they use it along with their name.

18                    And then you look for what the  
19          product is, because if you're buying pasta,  
20          sometimes you want spaghetti, sometimes you  
21          want twist, sometimes you want something else.  
22          You want to make sure what product you're  
23          buying.

24                    Then you might look at -- you  
25          might look at the price, depending on how

1 thrifty you are.

2 But for the most part, you just  
3 want to make sure that you're buying the  
4 product that you trust, because that's what  
5 all those elements mean. I mean, we are the  
6 source of this product.

7 Q. So would you say that's the most  
8 important factor in a purchasing decision for  
9 something like this?

10 A. I'm not sure I understand the  
11 question. What--

12 Q. You're talking about the brand name  
13 or the identification, being familiar with the  
14 product?

15 A. Yes. People tend to buy the same  
16 thing over and over again. And, you know,  
17 they want to know that they're buying what  
18 they trust.

19 And, you know, one of the things  
20 about Mueller's, I guess you have to be old  
21 enough to remember it, but all the people I  
22 know that used to eat it when they were kids  
23 and they're in their 70's and 80's now just  
24 remember this as such a heritage of America.  
25 So they really played on that. It's very

1 trusted, especially on the east coast.

2 Q. When you mention that, I'm  
3 wondering -- Well, we'll get to that. Let's  
4 look at the next box, 1999.

5 A. Okay.

6 Q. Does "America's Favorite Pasta"  
7 appear on that box?

8 A. Yes, it does.

9 Q. And does it appear as a trademark  
10 on that box--

11 A. Yes.

12 Q. --in your opinion?

13 A. Yes.

14 Q. In about 2001--

15 A. Yes.

16 Q. --does it also appear on there?

17 A. Um-hum.

18 Q. And in the 2002 packaging?

19 A. Yes, it does.

20 Q. Is it your conclusion that from  
21 1893 to 2002 that the American theme that you  
22 spoke about was carried through all the way  
23 through the packaging?

24 A. Well, the red, white, and blue,  
25 and things like the flag, the flag has

1 returned again in 2002.

2 I mean, the things that are  
3 consistent are always the blue ends, the  
4 little red stripe that you see on almost  
5 everything, you see also the name, and it's  
6 the longevity of the name.

7 And then since the 1950's, they've  
8 been using "America's Favorite Pasta," although  
9 they used other things that identified it as  
10 America's before that. But it was from day  
11 one an American product.

12 Q. Speaking about the appearance of  
13 "America's Favorite Pasta" on the packaging,  
14 is it necessary to advertise outside of the  
15 packaging in order to develop a brand  
16 awareness among consumers?

17 A. Well, a lot more commodity-type  
18 products like this are ones that don't make  
19 as much money, just don't have the budget to  
20 do it. So they only coupon, maybe. So  
21 that's the only chance you'd get to see it.

22 I mean, there's hundreds and  
23 hundreds of products that just aren't  
24 advertised. They're just only couponed.

25 Q. Let's go back to your report.

1 A. Okay.

2 Q. And I would like to have you look  
3 at Exhibit C.

4 A. Okay.

5 Q. Do you recall why this was  
6 included in your declaration?

7 A. Yes. I believe -- let's see, I  
8 had a thing on it that I read what it said.  
9 I'll have to find that.

10 Q. Sure.

11 A. Maybe it was in mine.

12 Q. You might look at paragraph 16 of  
13 your report if that helps refresh your  
14 recollection.

15 A. Thank you. Yes. Page 16?

16 Q. Paragraph 16.

17 A. Oh, I'm sorry. Thank you. Thanks  
18 for helping me find it.

19 Q. Um-hum.

20 A. Okay. I pulled this out because  
21 what it said was -- let me find it here --  
22 Chrysler ad in the New York Times, February  
23 16, '03, reads, "Six-speed transmission, a  
24 measurable quality; however" -- it continues  
25 on -- "50 percent American imagination, 50

1                   percent German precision, 100 percent passion."

2                   Well, to me, that's a puffery  
3                   statement, but people understand that.  
4                   They're not going to say, "Oh, my God, it  
5                   doesn't really have 50 percent German. I'd  
6                   like to look under the hood. Prove that to  
7                   me."

8                   But it's just a figure of speech  
9                   that is part of the advertising.

10                  Q.       Can statements of puffery serve as  
11                  a trademark?

12                  A.       If they're used enough and they're  
13                  used over a long period of time, they become  
14                  part of the branding.

15                  Q.       Looking at paragraph D, which I  
16                  believe is also addressed in the same  
17                  paragraph, 16--

18                  A.       Um-hum.

19                  Q.       I'm sorry, Exhibit D.

20                  A.       Okay. C, D--

21                  Q.       Can you explain how this exhibit  
22                  affected your opinion in your report?

23                  A.       Yes. What the point of this one  
24                  was is that everyone -- not everyone, but  
25                  people often use, like, Kansas City, the best

1           barbecue, the finest steaks, you know, those  
2           kinds of things aren't meant to be  
3           measurable.

4                     They're puffery and they're meant  
5           to add to the brand, sort of a steam, and  
6           make you want to go there.

7                     But it's not because people have  
8           voted that it's the best one, unless they  
9           said that. And they're not saying that here.

10           Q.        Okay. How about Exhibit E, then,  
11           which was also referenced in paragraph 16?

12           A.        Well, these were just examples of  
13           words, like, the brand, Best Foods or  
14           Preferred Mutual Insurance Company or Best  
15           Western. These are brand names.

16                     Well, is it the best? "BMW, the  
17           ultimate driving machine."

18                     And, of course, my favorite,  
19           "Ringling Brothers, the greatest show on  
20           Earth."

21                     And "America's strongest banks,  
22           UMB."

23           Q.        Do you know if -- Well, let's look  
24           at the Midwest Express Airlines, "The best  
25           care in the air."

1 A. Right.

2 Q. Do you see the registration symbol  
3 following--

4 A. Right--

5 Q. --"The best care in the air"?

6 A. --I do.

7 Q. Do you know what that means?

8 A. Yeah, that means they have  
9 registered that as part of their trade dress.

10 Q. I'm sorry, say that again?

11 A. It's part of their brand identity,  
12 part of their trade dress.

13 They have a trademark on the name  
14 of their airlines, except that they've changed  
15 it to Midwest Airlines now. But they still  
16 use "The best care in the air" on all their  
17 advertising.

18 And almost everything -- if you  
19 open up their magazine -- I fly them all the  
20 time so I know -- but everything that they  
21 use, they always use that tag line.

22 Q. And on your favorite one, "The  
23 greatest show on earth"--

24 A. Right.

25 Q. --do you see the registration

1 symbol following that?

2 A. I do. I do.

3 Q. And does that also means that it's  
4 a federally registered trademark?

5 A. Yes, it does.

6 Q. So based upon these items and  
7 probably your experience, is it your opinion  
8 that these types of statements of puffery are  
9 registerable with the trademark office?

10 A. Yes, they are.

11 Q. And are you also of the opinion  
12 that they are a trademark that one could  
13 protect?

14 A. Yes.

15 Q. Exhibit F, which you refer to in  
16 paragraph 17 of your report--

17 A. Right.

18 Q. --could you explain what this  
19 exhibit is meant to show?

20 A. These are more notions of  
21 patriotism that Mueller has used.

22 And you can see how John Hancock  
23 and Dolly Madison and Mobil, it's a  
24 combination of using symbols like stars and  
25 colors like red, white, and blue, and using

1 the word "American" or "national," things that  
2 just really express sort of our national  
3 pride.

4 Q. Do you think that these patriotic  
5 elements can serve to distinguish one source  
6 of goods from another?

7 A. Oh, absolutely, especially if you  
8 use them over time and they're embedded in  
9 everything you do. They become part of your,  
10 you know, your brand. They represent who you  
11 are.

12 If you looked at Mobil and it had  
13 a green "o," you'd know something is wrong  
14 there.

15 Bank of America, the little --  
16 this flag is supposed to represent the  
17 cornfield or the wheat fields. I know the  
18 guy that did it. It's supposed to look sort  
19 of like a flag and sort of like the  
20 countryside. This is a huge tradition in our  
21 country.

22 Well, all countries do it. I  
23 mean, every country, the French, the Italians,  
24 you know, the British, they all have their--

25 Q. And the Texans?

1 A. The Texans.

2 (Laughter.)

3 A. Don't mess with Texas. See?

4 "Don't mess with Texas," that's one.

5 Q. Moving to Exhibit G--

6 A. Okay.

7 Q. --which is referenced in paragraph  
8 18 of your report, do you recall what this  
9 exhibit was meant to show?

10 A. I think I Googled this.

11 Wait, when was this? I think --  
12 I'm trying to remember.

13 Q. That's all right. Take your time.  
14 And if your report helps you--

15 A. I think what that was was just to  
16 show people use the word "favorite" in  
17 puffery terms a lot but it can also be a  
18 trademark.

19 Some of these may not be used --  
20 I'm not sure if they're using this as part  
21 of the trademark name, but it's used to  
22 suggest that you should go there because  
23 other people like it.

24 Q. Paragraph 19 of your report--

25 A. Um-hum.

1 Q. --just says, "Mueller's brand has  
2 evolved over a long period of time--"

3 A. Where is it?

4 Q. I'm sorry. 19.

5 A. I've got two reports going here.  
6 18. Okay. 19.

7 Q. "Mueller's brands evolved over a  
8 long period of time and the trade dress  
9 elements of the brand identity that are part  
10 of the trademark were first used starting in  
11 the early 1900's and, thus, have equity with  
12 consumers."

13 And it goes on. We've kind of  
14 talked about that already, haven't we?

15 A. 1950's, yeah.

16 Q. Is there anything in there that  
17 you would change today?

18 A. No.

19 Q. Paragraph 20?

20 A. Well, I do say, and I believe this  
21 is true, that brand can be in all forms  
22 brand communication.

23 The product packaging is the most  
24 critical because it provides the consistent  
25 visual/ verbal clues and signs to the

1 consumer, because that's the main place they  
2 see it is in the grocery store and, perhaps,  
3 coupons.

4 I went on to say that as you  
5 know, H&R Block -- I didn't say it here, but  
6 H&R Block now owns that little green square.

7 Who would think you could own a  
8 green square, but they do now.

9 Coke is red. Wonder Bread has the  
10 dots. We just redesigned that and I will  
11 tell you when we didn't have the right amount  
12 of dots on there and they weren't the right  
13 color, the consumer noticed it. We did  
14 change it just a little bit, though.

15 BMW is "The ultimate driving  
16 machine."

17 Hush Puppy owns "The world's most  
18 comfortable shoe."

19 Chevy is "Like a rock." They're  
20 part of the brand, part of the trade dress.

21 Q. Okay. Let's move to Exhibit H,  
22 which you speak about in paragraph 21 of your  
23 report in case that helps you.

24 A. Okay. H?

25 Q. H. And I think you've touched on

1           this somewhat already, but can you explain  
2           how this particular exhibit, what that meant  
3           to you when you were using your--

4           A.       Well, I just thought it was  
5           interesting that they had taken this one  
6           element, which is the blue ends, and this  
7           little red stripe, and over time it really  
8           means something.

9                   And they've reintroduced the flag.  
10          They had the "America's Favorite Pasta," but  
11          they put the flag back into this one.

12                 So the flag has been carried forth  
13          and it's just such an -- to me, this is just  
14          such an American icon and they're really  
15          trying to associate the brand more and more  
16          with an American product.

17          Q.       I notice the last bullet on  
18          Exhibit H says, "American rather than Italian  
19          pasta name and recipes."

20          A.       Right.

21          Q.       Why was that important to you?

22          A.       Well, because brands have heritage,  
23          just like Grey Poupon is French. Mueller's  
24          is American. And if you go to the pasta  
25          aisles, there is essentially three kinds.

1                   There's the Artisan pastas which  
2                   usually tend to be almost exclusively from  
3                   Italy, from some, you know, hand-made Momma  
4                   Mia or whatever. And they're packaged in  
5                   very artisan kinds of packages.

6                   And then there's a standard boxed  
7                   pasta and you tend to have two kinds there,  
8                   in general.

9                   And you tend to have the American  
10                  pasta and you have the Italian ones. And  
11                  they tend to say all over them that they're  
12                  made in Italy -- or, you know, the consumers  
13                  always look and see where they're made.

14                 They see what kind of wheat they  
15                 have and they look to see where it was made  
16                 and if it has Italian names, Italian colors.

17                 The Italian pastas also tend to be  
18                 in blue packages. Not always but it's just  
19                 sort of a tradition there.

20                 Q.       And what do you base that opinion  
21                 on?

22                 A.       Observation. Just go look in the  
23                 store and that's what you see, you know. I  
24                 mean, Campbell's Soup is red. It just is.

25                 Q.       Do you base that on your

1 experience as one in the industry?

2 A. Yeah. And I've traveled to Italy  
3 a lot and, you know, I know a lot about  
4 Italian pasta and I eat a lot of it.

5 Q. I should have asked you this  
6 earlier, but are you a brand expert?

7 A. Yes.

8 Q. Can you give me some examples of  
9 Italian-themed pastas that you would consider  
10 an Italian pasta versus an American pasta?

11 A. Well, De Cecco, I think is the  
12 name of one that I buy sometimes.

13 Obviously, Barilla. Barilla is not  
14 sold here very much, at least where I shop.  
15 I think of it as Italian.

16 I like -- a lot of the Artisan  
17 pastas are -- there's the angel one, DaVinci,  
18 I believe, that's blue and it's Italian.

19 The interesting thing is, no matter  
20 where you go, the pastas are often different  
21 names.

22 You know, they're not always --  
23 you don't always find the same brands.

24 But what I have noticed is there  
25 does tend to be the kind of -- almost all

1 the Italian ones will have some green on them  
2 and they'll use a lot of language, Italian  
3 language, on them.

4 And I think a lot of macaroni  
5 products, in general, tend to come in kind of  
6 more of a white, kind of a clean box. It's  
7 just kind of a general statement.

8 But, to me, there's a difference  
9 in sort of the macaroni American heritage and  
10 this kind of pasta heritage, which is much  
11 more European -- or Italian, rather.

12 Q. I notice you're pointing to Exhibit  
13 I. Maybe we should go ahead and talk about  
14 that.

15 A. Since I'm already over there.

16 Q. Yes. Can you explain what is in  
17 Exhibit I?

18 A. Let me refer back to my notes and  
19 see what I said here.

20 Q. Um-hum.

21 A. One of the things I noted in  
22 general is that a lot of times the Americans  
23 will say things, like, elbow, noodles, shells,  
24 twists; whereas, sometimes it will be --  
25 like, penne is obviously more an Italian

1 name.

2 Let's see, what else did I say  
3 here? If I may go through these?

4 Q. Please do.

5 A. The dominant use, if I look at the  
6 Mueller's, this particular one, it's obviously  
7 the time that I did this, "America's Favorite  
8 Pasta." It's very, very patriotic. The red  
9 stripes and the blue top and bottom just  
10 reinforce it.

11 The flag brand. The descriptions  
12 of sort of the American names like ruffles  
13 and the distinctly American recipe on the  
14 box. If you look at it, it's more like mac  
15 and cheese kind of things. Mostly the  
16 packaging is white.

17 You go to Barilla, the use of the  
18 green, the white, and the red that represents  
19 the Italian flag. It claims that it's  
20 "Italy's Number One Pasta." The Italian  
21 description for pasta names, the multi-lingual  
22 packaging and, of course, the dark blue.

23 And on the Ronzoni, again, it's  
24 more of an Old World treatment. I'm not  
25 sure if it's made here or there, but it's

1                   certainly an Old World style.

2                   Italian description for the pasta  
3                   name. Mostly blue package. And distinctly  
4                   Italian recipes on the box.

5                   So all the clues if a consumer  
6                   were to pick it up and look at it, they're  
7                   going to know where that pasta has -- you  
8                   know, what the origin was because of the  
9                   name, because of the symbols and the -- just  
10                  the way it's all put together and the kinds  
11                  of recipes that are on it. And the kinds of  
12                  noodles and the names for those.

13                 Q.       Tell me if either of the two,  
14                   either Barilla or Ronzoni, included a  
15                   statement about being "America's Favorite  
16                   Pasta," what do you think the impact would  
17                   be?

18                 A.       I think it would be a big surprise  
19                   because they're definitely Italian in origin.  
20                   I mean, their brand -- they are Italian  
21                   brands. And, I mean, I wouldn't think they  
22                   would do that.

23                   If I were their advisor, I  
24                   probably wouldn't advise them to do that  
25                   because I'd probably say -- I would probably

1 keep to the Italian heritage.

2 Q. Do you think that there'd be an  
3 impact on the consumer when they made a  
4 purchase of the product or were trying to  
5 make the purchase of a product?

6 A. Well, I think it would be  
7 confusion. I think they'd be confused.

8 Q. And because?

9 A. Well, I think in the markets where  
10 Mueller is sold, I think they would  
11 definitely be confused.

12 I mean, anybody that's associated  
13 with that, it would be like the second circus  
14 that came to town. I think it's completely  
15 associated with Mueller's.

16 But I think the other thing is it  
17 doesn't make sense because it isn't -- you  
18 know, it's an Italian product. And I think  
19 it would be very confusing to the consumer.

20 Q. The last thing I want to do is go  
21 to the very last paragraph of your report.

22 A. Um-hum. Okay.

23 Q. Paragraph 22, I believe.

24 A. Yes. 22. My conclusions?

25 Q. Yes, which I just tucked away here

1                   somewhere, so hang on. Here we go.

2                   Could you go through conclusions  
3                   and explain if you still agree and say why?

4                   A.       Well, the phrase "America's  
5                   Favorite Pasta" has multiple meanings that are  
6                   subjective as you say "Mueller."

7                   It doesn't mean that it's not a  
8                   trademark, but it just means -- "favorite"  
9                   can mean one thing to one person and one  
10                  thing to another.

11                  But it definitely suggests that  
12                  it's made in America, that Americans love it,  
13                  and it's something that is part of our  
14                  culture and part of our -- sort of our  
15                  heritage as a brand.

16                  When this was written, I think we  
17                  were really trying to -- this was about it  
18                  being puffery and that's why we make a lot  
19                  of statements about the word "favorite" is  
20                  subjective, because I think at that time we  
21                  were talking about it not being measurable,  
22                  but we've since proven that.

23                  Q.       Let's back up there on that issue.  
24                  When you say that it's not measurable, can  
25                  you explain what that means?

1           A.       Well, what I mean is they're not  
2 saying that -- "favorite" is puffery.

3                    If you were to say, "Sold more  
4 than any other brand in the country" or  
5 "Determined by scientists to be--" blah, blah,  
6 blah, then that's measurable. That's not  
7 puffery. That's what I mean.

8           Q.       Thank you.

9           A.       And I go on to talk about this  
10 because that's what this case was about.

11                   And I talked about that the only  
12 reference to the meaning on the package was  
13 that it tastes great, you know.

14          Q.       I think the third from the bottom,  
15 the bullet, third--

16          A.       Uh-huh.

17          Q.       The phrase "America's Favorite  
18 Pasta," the colors, logo, patriotic symbols,  
19 and American associations as distinct from  
20 Italians, see Exhibit 1, they're all part of  
21 Mueller's long brand heritage and are familiar  
22 to generations of American families."

23          A.       Right.

24          Q.       Do you believe that statement is  
25 still true?

1           A.       I certainly do. It's the  
2 patriotism. I mean, it's the whole -- it's  
3 just the -- it's like Campbell's Soup.

4           Q.       And in the last paragraph--

5           A.       Uh-huh.

6           Q.       --you say, "All these trade dress  
7 features, including the phrase 'America's  
8 Favorite Pasta,' serve as a trademark function  
9 and help consumers recognize the Mueller's  
10 brand."

11          A.       That's correct.

12          Q.       Do you still stand by that  
13 conclusion?

14          A.       I do.

15          Q.       I'm going to show you what's been  
16 marked previously as Exhibit No. 6.

17          A.       Okay.

18          Q.       Can you tell me what that is?

19          A.       Yes, this is the Mueller's  
20 multi-grain spaghetti. And I believe it's  
21 their new packaging.

22          Q.       Do you recall what's new about the  
23 packaging?

24          A.       I believe that they have changed  
25 their sort of ribbon here and they've

1 basically evolved their logo a little bit.

2 Q. Do you--

3 A. I haven't seen this, I don't  
4 believe.

5 (Deposition Exhibit-97 was marked  
6 by Ms. Burbach for identification.)

7 Q. (By Ms. Burbach) Well, actually  
8 let me go ahead and give you Exhibit 97 real  
9 quick here.

10 A. I think I saw this one  
11 (indicated).

12 Q. Exhibit 4, is that the one you  
13 saw?

14 A. Yeah, I've seen that, yeah.

15 Q. Is that the same logo as the one  
16 on Exhibit No. 6?

17 A. Yes.

18 Q. And do you believe--

19 MS. BURBACH: For the record,  
20 she's looking at the actual physical box of  
21 Exhibit 6 and Exhibit 4 and not the  
22 photocopy.

23 A. Right. I'm holding it in my  
24 hands. Okay.

25 Q. (By Ms. Burbach) Do you believe

1           that this new version of the box carries  
2           through the American theme that you spoke  
3           about earlier?

4           A.       Yes. It has a star behind it now  
5           and it still has "America's Favorite Pasta,"  
6           which I think is kind of interesting that  
7           they put it below it, which I think is even  
8           better.

9           Q.       Why do you say that?

10          A.       Because it's almost like a tag  
11          line then, "America's Favorite Pasta." It  
12          really reinforces it. And it has the red,  
13          white, and blue.

14                   And it looks like they're starting  
15          to-- this is the one that I was looking at  
16          the other day.

17          Q.       You're referring to Exhibit 4?

18          A.       Yeah, Exhibit 4. I saw it the  
19          other day, which, again, are the sea shells,  
20          which are definitely American, "America's  
21          Favorite Pasta," the new logo, which is, you  
22          know, evolved from the old one, still using  
23          the ribbon, of course, and the big star  
24          behind it really reinforces the patriotic  
25          theme. And the clean, white box.

1                   Let's see what's on the back. Sea  
2 shell broccoli. Okay. That's very American.

3           Q.       Do you see on the back of box 4  
4 where it says, "Makes a Meal"?

5           A.       Um-hum. "Makes a Meal," um-hum.

6           Q.       Can you explain what that is or  
7 what that looks like to you?

8           A.       What I would imagine this is,  
9 although I have not researched it, I'll tell  
10 you that, is that it's probably an icon.

11                   I'm not sure if they've registered  
12 it or not. But it's part of a program for  
13 a meal that they have recipes for, I'm sure.

14                   And it has some kind of -- "Makes  
15 a Meal" probably has something to do with one  
16 of the recipes or some of the recipes.

17                   They probably have some sort of it  
18 cooks quick, it's nutritious, it provides this  
19 and that.

20           Q.       Does that same banner appear on--

21           A.       Uh-huh, yeah. They're starting to  
22 use this now. I see it on both of these  
23 now. " Makes a meal."

24                   So this obviously has a "dot com"  
25 and you can visit the web site.

1 Q. With having these on two packages,  
2 if you just saw that, would you think that  
3 the source was affiliated or associated?

4 A. Well, obviously, "Makes a meal" is  
5 part of the Mueller thing, I believe.

6 I mean, I don't think it's  
7 something to do with, like, the American  
8 Heart Association.

9 I think it's one of their programs  
10 and it would be like Lexus having a really  
11 good service deal that you get and it's part  
12 of their -- part of what they do to promote  
13 their brand.

14 Q. But you consider that a trademark?

15 A. It could be. It could be a  
16 trademark and it might just be a promotion.

17 But it might also become part of  
18 their brand heritage, but you could trademark  
19 it just for a promotion if you wanted to.

20 Q. So looking at Exhibit 96, looking  
21 at Exhibit I to your original report--

22 A. Um-hum.

23 Q. --and comparing that to the current  
24 packaging--

25 A. Okay.

1 Q. --I'm talking about the very first  
2 Mueller's box on Exhibit I.

3 A. Got it. Okay.

4 Q. --compared to the new packaging--

5 A. Okay.

6 Q. --if you say that--

7 A. Let me get it here.

8 Q. Oh, sure.

9 A. All right. Now, what is your  
10 question?

11 Q. Looking at the very first box on  
12 Exhibit I, to the box on Exhibit 4--

13 A. Right.

14 Q. --would you say that the American  
15 theme has continued?

16 A. Yes, and I just noticed something  
17 else. Now, they say, "Made with North  
18 American grown durum wheat."

19 Q. What does that mean to you?

20 A. Oh, it just means that it's not  
21 from wheat from Italy like a lot of them  
22 say, you know, "Made from semolina from  
23 Italy." This one says it's made in North  
24 American, which I don't think they've done  
25 that before.

1           Q.       I don't want to paraphrase, but do  
2           you think the way they use "America's  
3           Favorite Pasta" now is stronger than the way  
4           they used it in Exhibit I, the very first  
5           box, in your opinion?

6           A.       I don't know if I would call it  
7           stronger. I'll tell you what, I think it's  
8           more visually appealing. They both say the  
9           same thing, though. This one has a lot of  
10          elements.

11                    When they redesigned it, it's more  
12          visually appealing by wrapping the ribbon  
13          around the star and signing off with --  
14          they've also brought the "Quality Since 1867"  
15          -- it's much easier to read than it was  
16          here.

17                    I mean, it's a nicer design  
18          basically. It's easier for the consumer to  
19          understand because when you say, "Mueller's --  
20          America's Favorite Pasta," it really flows.

21                    "America's Favorite Pasta --  
22          Mueller's,"

23                    I mean, that's good, too, but this  
24          is better.

25          Q.       As it appears in Exhibit 4,

1 "America's Favorite Pasta," does that appear  
2 as a trademark to you?

3 A. Yes, um-hum.

4 Q. And can that use of "America's  
5 Favorite Pasta" serve to identify the source  
6 of the pasta?

7 A. When it's used with -- yes, it  
8 can, like "The greatest show on earth," yeah.

9 But I would imagine you would tend  
10 to use it with the word "Mueller's," though.

11 It has more -- Ringling, you could  
12 say, "The greatest show on earth," but you  
13 usually have Ringling Brothers near it as  
14 part of it.

15 Q. Let's go through Exhibit 97, which  
16 I've handed you--

17 A. Okay.

18 Q. --before we go on. Can you tell  
19 me what Exhibit 97 is?

20 A. What you just gave me, correct?

21 Q. Um-hum.

22 A. This is the Declaration of Ann  
23 Willoughby.

24 Q. And when did you sign this  
25 declaration?

1 A. March 6.

2 Q. And do you recall in this  
3 declaration affirming all the statements made  
4 in your report--

5 A. Yes, I do.

6 Q. --of February 21, 2003?

7 A. Yes, I do.

8 Q. Let's look at paragraph 4 in  
9 particular. You state, "First, it remains my  
10 opinion that AIPC's use of the term  
11 'America's Favorite Pasta' on Mueller's  
12 packaging is puffery and has no impact on the  
13 purchasing decision of the consumer, other  
14 than brand recognition. "

15 A. Um-hum.

16 Q. And you said, "I believe that  
17 consumers of food products in general and  
18 pasta in particular can regard a term or  
19 phrase as puffery and still associate and  
20 identify that term or phrase as a branding  
21 statement either alone or in connection with  
22 the mark."

23 A. Certainly.

24 Q. And that's still your opinion  
25 today?

1                   A.       Yes.

2                   Q.       And you go on to explain some  
3 examples of that. Can you speak about that?

4                   A.       Well, "When you care enough to  
5 send the very best" is Hallmark and we all  
6 know that people know that's Hallmark.

7                             And, now, is that the very best?  
8 Well, it depends. Some people might say yes  
9 and some people might say no.

10                            While the consumer might give  
11 little weight to the factuality of the  
12 phrase, recognizing it as mere puffery, the  
13 consumer also draws a connection between the  
14 faith in Hallmark.

15                            And they own that, you know.

16                            Midwest Air, "The best care in the  
17 air," we all associate that with Midwest.

18                            "America's strongest banks," "The  
19 ultimate driving machine," I talked about the  
20 brand functioning includes the use of "The  
21 best care in the air" by Midwest, "America's  
22 strongest banks, " and I talked earlier about  
23 -- I was looking at Wheaties the other day  
24 in the grocery store, "Breakfast of  
25 Champions."

1                   You would never -- no one else  
2                   could use that. But what kind of champions?  
3                   I mean, does that mean they're the best?

4                   Q.       Based on your experience and  
5                   personal knowledge, you would conclude that  
6                   these statements of puffery could be a  
7                   trademark?

8                   A.       Absolutely, but it doesn't mean  
9                   that they're measurable is what I'm saying.

10                   Puffery means that they -- that  
11                   people -- you know, people don't take them  
12                   literally.

13                   Q.       Okay. In your opinion and  
14                   experience, would you say that marks that are  
15                   merely puffery can become distinctive over  
16                   time if they weren't originally?

17                   A.       I think they grow in distinction,  
18                   yeah. For example, it might be just  
19                   description in the beginning and then over  
20                   time, people -- I'm sure the first time  
21                   Hallmark said, " When you care enough to send  
22                   the very best," everybody said, Well, okay.  
23                   But now after all these years, it really  
24                   means something.

25                   And part of that is because

1           they've continued to use it over and over  
2           again. The more you use it -- for example,  
3           you could register "Makes a Meal," but if  
4           they stop using it tomorrow and don't use it  
5           anymore, then it doesn't -- the meaning to  
6           the consumer doesn't grow as much. Again, it  
7           could be a trademark.

8           Q.       So what does that mean for you in  
9           the context of "America's Favorite Pasta"?  
10          Do you believe that that mark has acquired  
11          distinctiveness?

12          A.       Yes. They've used it since 1950.  
13          And for the people that buy this product,  
14          that is their favorite pasta and they expect  
15          to see that on the box. It's part of their  
16          brand heritage.

17          Q.       In paragraph 5, I believe you  
18          followed very much with what you've just  
19          said.

20                    You indicate that, "A number of  
21          consistent elements may serve either  
22          individually or collectively to prove a brand  
23          identity and a consumer seeing the Mueller's  
24          packaging on the supermarket shelf may draw  
25          upon a different elements to identify the

1 brand."

2 Does that include "America's  
3 Favorite Pasta" as it appears on the  
4 packaging?

5 A. Yes.

6 Q. Have you seen any of Barilla's  
7 packaging for their pasta?

8 A. Well, in the report, I had it, I  
9 believe.

10 Q. Right.

11 A. Yes.

12 Q. Can you explain like you did with  
13 the Mueller's pasta what you would consider  
14 as the information hierarchy on this box?

15 A. Okay. From my experience and my  
16 knowledge, when I first saw this package, I  
17 associated it with an Italian-made pasta  
18 because so many Italian pastas come in mostly  
19 blue boxes and they almost always have the  
20 Italian flag, the red, white, and green on  
21 them.

22 They tend to also have Italian  
23 names and, like it says, al dente. And on  
24 the back, they have recipes that are more  
25 Italian and they talk about Italy. And they

1 talk about, you know, Italians chose Barilla  
2 pasta by an astonishing five-to-one margin,  
3 blah, blah, blah.

4 And it looks as though they have  
5 used "number one" because of sales.

6 I'm not really sure these qualities  
7 -- they talk about qualities and then they  
8 talk about their sales.

9 But when I first saw this several  
10 years ago, I associated this with "Italy's  
11 Number One Pasta."

12 It helped to reinforce it was from  
13 Italy to me. And just almost everything  
14 about it suggests--

15 Q. Is it important that that  
16 information appears actually on a box as  
17 opposed to an advertisement?

18 A. You mean this--

19 Q. Um-hum.

20 A. --all these things? Well, usually  
21 in an ad, you'll get a lot of this in an  
22 ad. I mean, they're going to make sure you  
23 know what their logo -- well, it's a color  
24 ad.

25 If it's a cooking book or

1 something, they're going to show a box  
2 probably if they're offering a recipe.

3 I doubt it that they do a lot of  
4 newspaper advertising with this. They just  
5 don't do it that much.

6 But, you know, the people that do  
7 the ads and promote it, they know what the  
8 brand elements are and they use them in  
9 promoting it.

10 Q. The fact that you state there  
11 isn't a lot of advertising of these products,  
12 does that make a difference in -- or does  
13 that give-- what impact does that have on  
14 what the packaging says?

15 A. Well, what it means is in almost  
16 all consumer products, the package has to  
17 work really hard. The package is the brand  
18 for a lot of products that don't advertise.  
19 It represents the brand because that's the  
20 only exposure people have to it.

21 And the other thing about it when  
22 you buy it, about packaging that might be  
23 different, Let's just say you buy a dress or  
24 something, you come in and take the tag off.  
25 But this (indicated) sits on your shelf for a

1 long time.

2 And then you -- I mean, the  
3 consumer has a relationship with it and you  
4 want to see how many calories are in it,  
5 what the recipe is. You are continually  
6 looking at it.

7 One of the things I always do  
8 every time I look at a pasta, the first  
9 thing I do is find out where it's made. And  
10 then if they're tricking me and saying, "Made  
11 in Illinois" or something -- you know, but  
12 that's just me, though.

13 MR. VAN HOOZER: Keep looking.

14 Q. (By Ms. Burbach) Does that box  
15 tell you where Barilla's product is made?

16 A. I'm looking. I'm looking.

17 MR. BANNER: You spend a lot of  
18 time in stores.

19 A. It's Illinois. Okay. They  
20 tricked me.

21 Q. (By Ms. Burbach) They tricked a  
22 branding expert.

23 So would you say that the point of  
24 purchase, then, is -- I mean, I don't want  
25 to put words in your mouth, but--

1           A.       You're asking me if -- what I  
2           think you're asking me is, how much weight  
3           does the package carry in the branding? Is  
4           that what you're asking me?

5           Q.       Yes, that's what I'm asking.  
6           Thank you.

7           A.       Okay. In a product -- okay. A  
8           product like this has only a few ways of  
9           people knowing about it.

10                   One of them is through their  
11           family and through, you know, like if my  
12           mother used Mueller and I use it or whatever.

13                   Word of mouth is another. On the  
14           shelf, that's where people typically see it.

15                   Possibly in a coupon. That's  
16           about it. Because these brands, for the most  
17           part, just are not advertised.

18                   Like, on television, maybe once in  
19           a blue moon in a magazine or something or in  
20           certain magazines or possibly couponed in  
21           something, but they're not advertised.

22                   So the only way you know about  
23           them is to see the shelf set, and the shelf  
24           set will be usually a variety of different  
25           kinds of pasta, you know, like a penne or

1 sea shells or whatever, and you just sort of  
2 recognize the brand block and you become  
3 accustomed to buying one. And usually you  
4 stay with it, at least most people do.

5 Q. What do you mean by "brand block"?

6 A. Okay. What I mean by brand block,  
7 or the way I use it is, when you see a  
8 group of products and they're all together,  
9 they're like a family, you know.

10 And a family is -- with pasta,  
11 they -- depending on how many varieties you  
12 have, you can have quite a bit of shelf  
13 space.

14 And so it's like a wall of blue  
15 is Barilla. A wall of white with red and  
16 white stripes is Mueller.

17 And that's why you -- like with  
18 Wonder Bread, that's why you keep those  
19 identity elements because you just immediately  
20 see them.

21 I mean, look at kids, they can see  
22 the golden arches forever. Kids know more  
23 about -- because the first thing you see are  
24 shapes and colors rather than words.

25 Q. And do you -- does that stand true

1 for these types of products, as well?

2 A. Absolutely. Absolutely. I mean,  
3 it's just what people expect.

4 I mean, if you change, for  
5 example, most -- not all of them, but most  
6 pastas have a little window here because  
7 consumers expect that now. And I know  
8 sometimes they take it away, but they bring  
9 it back right away.

10 I mean, this is just what we  
11 expect. If you change our expectations, then  
12 it's upsetting, you know. We don't like  
13 that.

14 Q. We originally had talked about  
15 Exhibit A to your original report.

16 A. Right.

17 Q. And is that what you observed in  
18 these photos?

19 A. Right. Yes. I mean, the pasta  
20 is a pretty interesting category in that they  
21 do tend to have very distinct colors.

22 That's exactly what I remember and  
23 Mueller definitely stands out with a white  
24 box.

25 MS. BURBACH: I think that's all I

1                   have right now. Do you want to take a break  
2                   or keep going?

3                   THE WITNESS: Keep going.

4                   CROSS-EXAMINATION

5                   BY-MR.BANNER:

6                   Q.       I don't remember exactly which  
7                   exhibit it was. I think it was this exhibit  
8                   that you created, B?

9                   A.       From a long time ago, yeah. For  
10                  the puffery case, you mean?

11                  Q.       Yes, for the puffery case that  
12                  you've endorsed for this case, too?

13                  A.       Yes.

14                  Q.       Okay. You've got used for the  
15                  first time "America's Favorite" in 1950?

16                  A.       I think it was. Let me look at  
17                  it here. Let me pull it out. Yeah,  
18                  "America's Favorite," yeah.

19                  Q.       Now, did they use it in '51?

20                  A.       Well, I wish I remembered better.

21                           What I did is just tried to find  
22                   as many exhibits as I could in all different  
23                   kinds of ways. And this was the first time  
24                   that I found that they used it was right  
25                   here and it was on the side right here

1 (indicated).

2 Q. So you can't say whether or not it  
3 was used in 1951 today or until -- I think  
4 your application claims use in '80--

5 A. We could probably find out when  
6 this -- I bet we could find -- if need be,  
7 you could probably find out when these recipe  
8 books came out.

9 Q. We looked at the recipe book  
10 earlier.

11 A. Oh, did you?

12 Q. It might not have been this one,  
13 though.

14 A. There might have been an earlier  
15 one, but this is the earliest I could find.  
16 I think--

17 MR. VAN HOOZER: That recipe book  
18 was introduced as an exhibit only in black  
19 and white form. Ms. Willoughby's copy is the  
20 best one we have.

21 A. I think I found -- I can't  
22 remember where it was.

23 I think I found it in the copy  
24 some other place, but this is the first time  
25 I could find it on the packaging. Does that

1 make sense?

2 Q. (By Mr. Banner) And you did  
3 pretty extensive research to get this?

4 A. Well, I'm sure I--

5 Q. Did you go over to AIPC's archives  
6 in his office?

7 A. I don't know that -- I was over  
8 there, but I'm not sure if that's where I  
9 got it. It's been so long.

10 But I did pretty good, but, you  
11 know, to me, this was enough to prove that  
12 case. If I were trying to prove -- I was  
13 just wanting to show that they'd used it for  
14 a while and that it was puffery.

15 If I had been asked when did they  
16 first use it, I would have gone deeper.

17 Q. Okay. I appreciate that. Is the  
18 phrase "America's Favorite," just a phrase?  
19 Is that pure laudatory to you or puffery?

20 A. Just "America's Favorite," not  
21 pasta?

22 Q. Yeah, just "America's Favorite."

23 A. Well, yeah, it's -- it's puffery,  
24 but it could also be distinctive if you add  
25 the element pasta, car, whatever.

1 I mean, if you were to add --  
2 like, "America's Favorite" is puffery. And I  
3 guess it could be "America's Favorite" if it  
4 were right next to a logo or, you know,  
5 like, "Mueller's is America's Favorite," for  
6 example, could be a trademark.

7 Q. Hypothetically, could the -- I'm  
8 going to ask you hypothetically.

9 A. Okay.

10 Q. I just want to get your--

11 A. Okay.

12 Q. --reaction as a brand expert.

13 A. Okay.

14 Q. If you saw the sign "Good food"  
15 from a restaurant--

16 A. Um-hum.

17 Q. --would that be puffery or could  
18 that be a brand?

19 A. No name, nothing?

20 Q. Just "Good food."

21 A. Well, if it's not associated with  
22 a brand, unless it were like Best Foods.

23 Q. Just a restaurant that--

24 A. But is there a restaurant's name  
25 on it?

1 Q. No, no restaurant name, just the  
2 address, like, 2405 Grand, "Good food."

3 A. Well, 2405 would be the name of  
4 the restaurant, then.

5 But if you're not -- do you know  
6 what I'm saying? I mean--

7 Q. It's just like a very small  
8 five-inch high number 2405 on the street of  
9 Grand, but it's got in ten-foot letters,  
10 "Good food." And it's had those letters for  
11 100 years. And it's a restaurant.

12 A. Yeah, I guess it could, then,  
13 because I do know -- there's one in New York  
14 City called "Good Diner." And that's what it  
15 is, "Good Diner" and it's trademarked.

16 Q. And you think that there would be  
17 a "Good" brand and people would recognize it  
18 as a good brand?

19 A. Probably the designation, if people  
20 -- it had been there for 100 years, it  
21 probably could be, yeah.

22 Q. Okay. Would your answer change if  
23 it was ten years?

24 A. This is like the prostitution joke,  
25 isn't it.

1 Q. I'm sorry.

2 A. You know that one?

3 Q. There isn't any right or wrong.

4 A. Okay. Okay. I mean, I'm trying  
5 to -- well, if you register something in the  
6 beginning--

7 Q. Please answer my question.

8 A. --you have -- it gains over time,  
9 over time.

10 Q. So ten years would be less than  
11 100 years, consistent use?

12 A. You mean -- I'm not sure what  
13 you're asking.

14 You mean, puffery or are you  
15 talking about--

16 Q. Brand recognition.

17 A. Brand recognition?

18 Q. Brand recognition.

19 A. It builds over time. It builds  
20 over time.

21 Q. Okay.

22 A. And with consistent use and with  
23 care and things like that. But you've got  
24 to -- you have to take care of it. You  
25 can't just throw it around.

1 Q. I agree. I agree. We talked  
2 about the American impact of the packaging--

3 A. Um-hum.

4 Q. --the brand identity of Mueller's.

5 A. Um-hum.

6 Q. The red, white, and blue.

7 A. Right.

8 Q. And that seems to be consistent  
9 beginning back there in -- it doesn't really  
10 say this is 1893, but this certainly says  
11 1914.

12 A. Right.

13 Q. So that's almost 100 years. 1914  
14 to 2006 is--

15 A. Since 1867.

16 Q. Yeah, but you don't have a picture  
17 of what it was in 1867. It could have been  
18 in a black box in 1867, right?

19 A. Yeah, but I wasn't trying to do  
20 that. Here is 1893. That's as far as I  
21 can go back.

22 Q. And in 1893, can you tell me what  
23 the packaging looked like?

24 A. Yeah, there it is.

25 Q. That's the 1893 package?

1 A. Yes.

2 Q. Okay. So it is red, white, and  
3 blue?

4 A. Yeah, and has a flag on it.

5 Q. Okay. I misunderstood your thing.  
6 I thought that this was 1914. So this  
7 Exhibit B, the first thing on the left is  
8 from 1893.

9 A. Well, let me look. It may have  
10 been 1914. I don't know that I have a  
11 package from 1893.

12 Q. Okay. That's good enough. But  
13 for a long period of time, red, white, and  
14 blue has been their principle--

15 A. Yeah, but red, white, and blue in  
16 a particular order.

17 Q. Okay. Would you explain the  
18 order?

19 A. Yes. The package is white.

20 Q. The package is white.

21 A. The tops and bottoms are blue and  
22 has a red stripe. It's the arrangement of  
23 the colors.

24 Q. And does that arrangement of the  
25 colors support the gestalt of the packaging?

1 A. It's part of it, yeah.

2 Q. Okay. And if you change the  
3 colors, would that adversely impact the--

4 A. Well, they might change a few for  
5 a variety reason or something like that.  
6 Occasion-ally, they do that.

7 But for the most part, they're not  
8 going -- they're not going to make this blue  
9 and make that white (indicated), let me put  
10 it that way.

11 Q. Comparing that with the Barilla's  
12 box in front of you--

13 A. Right.

14 Q. --I see red, white, and blue on  
15 that box.

16 A. Well, yeah, but it's a blue box  
17 with a little bit of red on it. This is a  
18 white box.

19 Q. I agree that it's a solid blue box  
20 with a red and white--

21 A. Yeah. But a consumer would never  
22 say that's a red, white, and blue box. It's  
23 a blue box.

24 Q. Okay.

25 A. That's a white box, at least in my

1 experience.

2 Q. Puffery can be a trademark?

3 A. Yes.

4 Q. And in this case, on what do you  
5 base that? The "America's Favorite Pasta" is  
6 pure puffery and it's also a trademark?

7 A. Yes.

8 Q. On what facts do you base that  
9 conclusion?

10 A. Well, I base it on two facts.

11 First of all, that many other  
12 brands have done the same thing. I think  
13 it's the same thing as "The greatest show on  
14 earth," whether it is from the--

15 Q. Yes.

16 A. And, I mean, I think it's the same  
17 thing as that. I mean, it's puffery but--

18 Q. But you don't believe it?

19 A. Well, they don't not believe it,  
20 it's just part of the deal, you know. It's  
21 puffery.

22 You can't prove it, that's what I  
23 mean.

24 But it's also part of their brand.  
25 It's like "Coke is the real thing." What's

1 the real thing? But nobody else can own it.

2 Q. Do you cook a lot?

3 A. Yeah.

4 Q. Do you have cookbooks?

5 A. Yes, but I don't use them a lot.

6 Q. I want to show you Applicant's  
7 Exhibit 87.

8 A. Okay.

9 Q. And it's a representation I've  
10 taken from the Internet of a book for sale.  
11 Have you ever seen--

12 A. I'm not familiar with that. It's  
13 a book?

14 Q. It's a book.

15 A. Uh-huh.

16 Q. And can you read it for me?

17 A. Yeah, it says Joie Warner's  
18 nominated for the James Beard award spaghetti  
19 "America's Favorite Pasta."

20 Q. So it must be pretty good if James  
21 Beard--

22 A. Oh, yeah, he was the guy.

23 Q. It's a very expensive book.

24 A. Um-hum.

25 Q. They have it on Amazon from one

1 cent up to \$10 or \$15. I wish I had time  
2 to buy one.

3 So people use "America's Favorite  
4 Pasta" to refer to spaghetti, at least?

5 A. He put that on there. It's kind  
6 of a different category, but I don't know if  
7 they -- I don't know if he has registered  
8 that or not. I don't know if Mueller has  
9 gone after him or not, but, you know, they  
10 could.

11 Q. Okay. I'm not sure--

12 A. Sometimes, you know, they'll --  
13 well, you know this, so--

14 Q. No, go ahead.

15 A. Sometimes in different categories  
16 people can use something like look at -- I'll  
17 show you an example of what I mean if I can  
18 find it here.

19 They do this a lot, in a lot of  
20 naming where you'll have, like, a fabricated  
21 or metaphorical name and you'll have more  
22 than one person using it different.

23 Like, Sprint might be in a  
24 different category. Or, like, an experimental  
25 brand, like, Explorer could be a software

1 brand or it could be a car, it could be  
2 different things. I mean, it depends on the  
3 category.

4 Q. I just have -- I want to show you  
5 what's known as Opposer's Exhibit No. 59  
6 which was used earlier.

7 A. Okay.

8 Q. And I'll direct your attention to  
9 the Savory Collection.

10 A. Uh-huh.

11 Q. In your opinion, could that be a  
12 brand?

13 A. That is -- it could be, yeah.  
14 Savory Collection could be -- yeah. They're  
15 not saying it's spaghetti, they're saying it's  
16 a collection.

17 And they could possibly turn that  
18 into -- it could be a collection of recipes  
19 or something they have.

20 I don't know really, though. I  
21 don't know about that. I'm just thinking.

22 Q. Okay. In your experience as a  
23 person who helps educate professionals about  
24 branding- -

25 A. Um-hum.

1           Q.       --do you normally advise people to  
2           put the "TM" next to new terms until they're  
3           registered?

4           A.       Yes, I do.

5           Q.       Do you normally advise your clients  
6           to use the "R" in the circle next to their  
7           brands?

8           A.       I sure do, but they don't always  
9           do it.

10          Q.       Good. We're on the same planet.  
11                    I want to show you from the  
12           declaration, which was previously marked as  
13           Applicant's Exhibit 88.

14          A.       Okay.

15          Q.       And I'd like for you to take a  
16           look at the part that I have--

17          A.       Multiple meanings?

18          Q.       Yes. Would you read that, please?

19          A.       Yes. "The most important point I  
20           wish to make is that the phrase 'America's  
21           Favorite ' has multiple meanings. The phrase  
22           has no inherent specific subjective meaning or  
23           factual objective meaning."

24                    Now, this is a puffery case,  
25           remember? "Only when a company links a

1 specific claim directly to the words  
2 'America's Favorite,' does the phrase acquire  
3 a specific meaning to the consumer, i.e.,  
4 America's Favorite Mustard. A product can be  
5 number one in sales or market share, but the  
6 phrase 'America's Favorite' does not imply  
7 either a subjective or factual meaning until  
8 the manufacturer indicates why the product is  
9 America's favorite.

10 "In this case of Mueller's, the  
11 consumer can taste why Mueller's is 'America's  
12 Favorite Pasta.' This phrase completely  
13 subjective and considered puffery by consumers.

14 "In my experience, if communication  
15 -- communicating the fact that the product is  
16 number one in sales and important, companies  
17 will state a specific claim."

18 Q. Okay. Do you still agree with  
19 that?

20 A. Well, okay. I'd like to clarify  
21 that. This particular case back then was  
22 about puffery.

23 And it was -- we were trying to  
24 show that we were not saying that we could  
25 measure it being the most favorite. But

1           that's what we were saying, it was puffery.  
2           It was not the greatest in sales or whatever.

3           Q.       Did you get any help in drafting  
4           this from anyone?

5           A.       No, no. I did it by myself.

6           Q.       And after "America's Favorite  
7           Mustard," will you read what you have in  
8           parentheses?

9           A.       "It's number one in U.S. sales."

10          Q.       Close parenthesis. Why did you  
11          put that there?

12          A.       I don't even remember doing that.  
13          I'm sorry.

14                 Maybe what I meant was -- I think  
15          there may have been -- I have to go back and  
16          look, but I think there may have been a  
17          mustard that may have said that we're number  
18          one in sales or something. I think that may  
19          have been what it was.

20                 In other words, in that particular  
21          case, they talked about it.

22                 But saying "favorite," what I meant  
23          was saying it's a favorite does not imply  
24          that there is a quantitative -- a  
25          quantitative quality to it.

1 Q. In preparing for the New World  
2 Pasta Company expert witness report--

3 A. Right.

4 Q. --that you did, did you look at  
5 the prior expert witness report presented by  
6 -- or the declaration by Lloyd Oliver? Do  
7 you remember the declaration?

8 A. Was that the other expert witness?

9 Q. Yes, he was the guy on the other  
10 side.

11 A. I probably did, but I don't  
12 remember it.

13 Q. Would this refresh your  
14 recollection?

15 A. Oh, okay.

16 Q. Do you remember reading that?

17 A. Vaguely. I'm sure I did.  
18 Truthfully, I don't remember what it said. I  
19 would have when I was younger.

20 Q. Okay. Do you know whether  
21 Mueller's packaging still includes the phrase  
22 in here in your declaration, "Taste why  
23 Mueller's is America's favorite pasta?"

24 A. I don't know.

25 Q. As a branding expert, would you

1 consider that to be a descriptive trademark  
2 usage, misuse of trademarks or good trademark  
3 usage?

4 A. You're asking me subjectively?

5 Q. I'm asking you as a branding  
6 expert.

7 A. I think that would be okay to do  
8 because you're asking them to figure out why  
9 you think it's their favorite -- you'll know  
10 why it's their favorite based on your  
11 opinion.

12 I very seriously doubt that they  
13 thought -- I don't know.

14 I don't know how that came to be,  
15 but-- and I don't know if it was used on the  
16 package, now that I think about it, or if it  
17 was used in advertising.

18 But, I mean, I don't know. I  
19 don't remember.

20 Q. Because it is used on packaging  
21 with the--

22 MR. BANNER: Do we have a box  
23 that has the American flag on it?

24 MR. VAN HOOZER: We did earlier  
25 today.

1 Q. (By Mr. Banner) I'll give you  
2 Opposer's Exhibit 12.

3 A. On the back, is that what you're  
4 talking about?

5 Q. Yes.

6 A. It says, "For over 135 years,  
7 pasta lovers have enjoyed the great taste of  
8 Mueller's. Our pasta cooks to perfection, made  
9 from durum wheat. Taste why Mueller's is  
10 America's favorite pasta."

11 Q. Okay. So for 2003--

12 A. And it was Mueller's "Create a  
13 Meal" back then, too.

14 Q. It was? Okay. I didn't realize  
15 that.

16 So for a period of years, they  
17 were using that in their packaging?

18 A. I don't know how often--

19 Q. Well, at least--

20 A. Well, they used it on this  
21 particular package, but I can't say -- I  
22 don't know if they used it for one year or  
23 one month.

24 Q. Okay.

25 MR. BANNER: Well, I think I'm

1 done.

2 MS. BURBACH: I have one question.

3 THE WITNESS: Okay.

4 REDIRECT EXAMINATION

5 BY-MS.BURBACH:

6 Q. If I were to tell you that the  
7 manufacturer or the owner of the Mueller's  
8 was the only pasta company to ever use  
9 "America's Favorite Pasta" on its packaging,  
10 would that affect your opinion about the  
11 strength of whether "America's Favorite Pasta"  
12 could be a trademark and is protectable?

13 A. If you were to tell me they were  
14 the only ones that had ever done it?

15 Well, I would say there's a lot  
16 less contention about it. And if they've --  
17 if they've used it over a long period of  
18 time and had been the most consistent, I  
19 would definitely think that it would -- they  
20 have a right to use it.

21 Because we don't -- what I don't  
22 know is if there was ever any litigation or  
23 anything about that a long time ago. I just  
24 don't know that.

25 Q. Okay.

1 MS. BURBACH: I think I'm  
2 finished. Thank you.

3 One other thing I need to do on  
4 the record, I need to move to admit this  
5 testimony in the opposition proceeding.

6 THE COURT REPORTER: I need to put  
7 on the record about copies.

8 You'll get the original, of course,  
9 full size. Do you want a mini copy or a  
10 full size for your copy?

11 MS. BURBACH: I think we need full  
12 size for the TTAB and, again, it needs to be  
13 certified, which we told you about.

14 THE COURT REPORTER: Do you need  
15 an ASCII or an e-mail?

16 MS. BURBACH: I would like an  
17 e-mail copy.

18 I move to admit the exhibits also  
19 in the opposition proceedings.

20 THE COURT REPORTER: And your copy  
21 full size?

22 MR. BANNER: I'll do whatever they  
23 do. I'm easy.

24 THE COURT REPORTER: Well, you can  
25 get the four on a page or just the regular

1 size. Some people like the four on a page  
2 because it saves space. Some people hate it  
3 because they can't read it.

4 MS. BURBACH: When you get an  
5 e-mail version, can't you print it either  
6 way? That's the way I've always done it.

7 THE COURT REPORTER: Depends on  
8 the program you've got, I guess.

9 MS. BURBACH: I've always been  
10 able to print it either way you want it.

11 MR. BANNER: Our printers don't  
12 allow us to print that, so I'll take a four  
13 on the page.

14 THE COURT REPORTER: A mini copy.  
15 Okay. Do you need an ASCII disk or an  
16 e-mail copy?

17 MR. BANNER: Yeah, sure. Send me  
18 an e-mail copy.

19 (The proceedings concluded at 4:55  
20 p.m.)

21 (Witness excused.)

22 .  
23 .  
24 .  
25 .

Ann Willoughby

DESCRIPTION OF EXHIBITS

| <u>EXHIBIT</u> | <u>DESCRIPTION</u>            | <u>PAGE</u> |
|----------------|-------------------------------|-------------|
| 93             | Subpoena                      | 21          |
| 94             | Notice to Take Deposition     | 22          |
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Exhibits (not attached)

(Exhibits retained by Mr. Van Hoozer.)

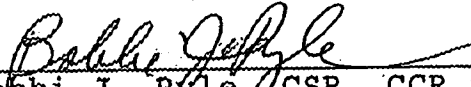
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1 Attorney for the Adverse Party was  
2 present, and officer was not disqualified as  
3 specified in Rule 28 of the Federal Rules of  
4 Civil Procedure.

5 I further certify that I am not  
6 related to any party herein or their counsel,  
7 that I am not clerk or stenographer of either  
8 party or of the attorney of either party, and  
9 have no interest in the result of this  
10 litigation.

11 IN WITNESS WHEREOF, I have hereunto  
12 set my hand this 12th day of November, 2006.

13  
14   
15 Bobbi J. Pyle, CSR, CCR #434  
16 Certified Court Reporter  
17 Missouri Supreme Court  
18 State of Missouri  
19  
20  
21  
22  
23  
24  
25



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1 AMENDED CERTIFICATE

2  
3 I Hereby certify that in addition to the  
4 certification made on the Reporter's  
5 Certificate Pages, this Original Deposition  
6 has been sealed pending the witness' right to  
7 review said deposition within 30 days, which  
8 time has not elapsed.

9  
10 SetDepo, Inc.  
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Ann Willoughby

November 3, 2006

Page 105

## CERTIFICATE

STATE OF CALIFORNIA :

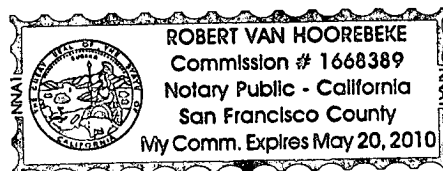
COUNTY/CITY OF SAN FRANCISCO :

Before me, this day, personally appeared, Ann Willoughby, who, being duly sworn, states that the foregoing transcript of his/her Deposition, taken in the matter, on the date, and at the time and place set out on the title page hereof, constitutes a true and accurate transcript of said deposition.

*Ann Willoughby*  
Ann Willoughby

SUBSCRIBED and SWORN to before me this  
30<sup>th</sup> day of November, 2006 in the  
jurisdiction aforesaid.

*[Signature]*  
My Commission Expires Notary Public  
May 20, 2010



Ann Willoughby

November 3, 2006

Page 106

## DEPOSITION ERRATA SHEET

RE: SetDepo, Inc.

File No. 11712

Case Caption: American Italian Pasta Co. Vs.  
Barilla G. E. R. FRATELLI-SOCIETA PER AZIONI

Deponent: *Ann Willoughby*  
Ann Willoughby

Deposition Date: November 3, 2006

To the Reporter:

I have read the entire transcript of my  
Deposition taken in the captioned matter or  
the same has been read to me. I request  
that the following changes be entered upon  
the record for the reasons indicated. I  
have signed my name to the Errata Sheet and  
the appropriate Certificate and authorize you  
to attach both to the original transcript.

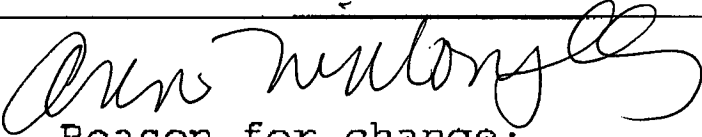
| Page No.           | Line No. | Change to:                                                                                   |
|--------------------|----------|----------------------------------------------------------------------------------------------|
| 0008               | 17       | add began working in college,<br>started own business 1972 and Willoughby Design in<br>1978. |
| Reason for change: |          |                                                                                              |

| Page No. | Line No. | Change to:        |
|----------|----------|-------------------|
| 0010     | 17       | add Board Member. |

Ann Willoughby

November 3, 2006

Page 107

  
Reason for change:

| Page No. | Line No. | Change to: |
|----------|----------|------------|
| 11       | 3        | resume     |

Reason for change: *spelling*

| Page No. | Line No. | Change to: |
|----------|----------|------------|
| 11       | 9        | added GAIN |

Reason for change:

| Page No. | Line No. | Change to: |
|----------|----------|------------|
| 12       | 21       | resume     |

Reason for change: *spelling*

Deposition of Ann Willoughby

| Page No. | Line No. | Change to: |
|----------|----------|------------|
| 44       | 5        | esteem     |

Reason for change:

| Page No. | Line No. | Change to:                                    |
|----------|----------|-----------------------------------------------|
| 56       | 21/22    | their advisors would<br>promote that strategy |

Reason for change:

| Page No. | Line No. | Change to: |
|----------|----------|------------|
| 81       | 4        | add Did.   |

Reason for change:

| Page No. | Line No. | Change to:                             |
|----------|----------|----------------------------------------|
| 94       | 24/25    | measurements rather<br>favours implies |

Reason for change:

| Page No. | Line No. | Change to: |
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Ann Willoughby

November 3, 2006

Page 108

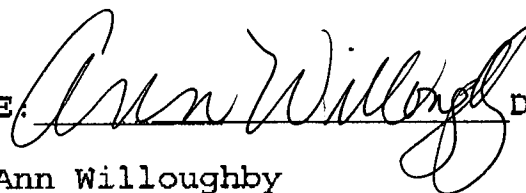
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Reason for change:

Page No.      Line No.      Change to:

Reason for change:

SIGNATURE:



DATE: \_\_\_\_\_

Ann Willoughby

Willoughby

*Subpoena to Anne Willoughby*

Ex. 93

**Issued by the**  
**UNITED STATES DISTRICT COURT**

WESTERN

DISTRICT OF

MISSOURI

American Italian Pasta Company, Opposer

**SUBPOENA IN A CIVIL CASE**

V.

Barilla G. E. R.

Fratelli-Societa, Applicant

Case Number:<sup>1</sup> Opposition No. 91161373

TO: Anne Willoughby  
 602 Westport Road  
 Kansas City, Missouri 64111

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below testify in the above case.

|                    |               |
|--------------------|---------------|
| PLACE OF TESTIMONY | COURTROOM     |
|                    | DATE AND TIME |

- ☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

|                                                                                               |                                                 |
|-----------------------------------------------------------------------------------------------|-------------------------------------------------|
| PLACE OF DEPOSITION<br>Hovey Williams LLP, 2405 Grand Blvd., Suite 400, Kansas City, MO 64131 | DATE AND TIME<br>November 2, 2006 at 10:30 a.m. |
|-----------------------------------------------------------------------------------------------|-------------------------------------------------|

- ☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

|       |               |
|-------|---------------|
| PLACE | DATE AND TIME |
|-------|---------------|

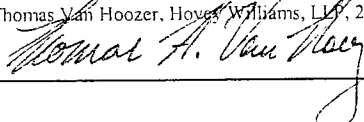
- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

|          |               |
|----------|---------------|
| PREMISES | DATE AND TIME |
|----------|---------------|

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

|                                                                                         |                          |
|-----------------------------------------------------------------------------------------|--------------------------|
| ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) | DATE<br>October 24, 2006 |
|-----------------------------------------------------------------------------------------|--------------------------|

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
 Thomas Van Hoozer, Hovey Williams LLP, 2405 Grand Blvd., Suite 400, Kansas City, MO 64108, (816) 474.9050



(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

American Italian Pasta Company  
 v.  
 Barilla Alimentare S.P.A  
 Opposition No. 91161373  
 Opposer's Exhibit 93

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Willoughby

*Notice of Deposition, Anne Willoughby*

Ex. 94

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AMERICAN ITALIAN PASTA COMPANY )

Opposer, )

v. )

BARILLA G. E. R. FRATELLI - SOCIETA )

PER AZIONI, )

Applicant. )

Opposition No. 91-161,373

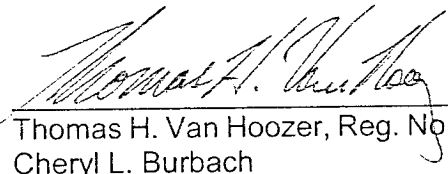
NOTICE TO TAKE DEPOSITION

PLEASE TAKE NOTICE that, pursuant to 37 C.F.R. 2.123, Opposer American Italian Pasta Company, by and through its attorneys, will take the deposition of Anne Willoughby in Opposer's case-in-chief, during its testimony period, before a Notary Public, or other officer authorized to administer oaths, commencing Thursday, November 2, 2006, at 10:30 a.m. at the offices of Hovey Williams LLP, 2405 Grand Boulevard, Suite 400, Kansas City, Missouri.

You are invited to attend and cross-examine.

AMERICAN ITALIAN PASTA COMPANY

By:

  
Thomas H. Van Hoozer, Reg. No. 32,761  
Cheryl L. Burbach  
Attorneys for Opposer  
Hovey, Williams LLP  
2405 Grand Blvd., Suite 400  
Kansas City, Missouri 64108  
(816) 474-9050

American Italian Pasta Company

v.

Barilla Alimentare S.P.A.

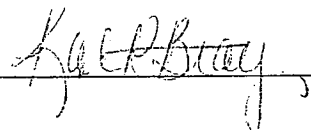
Opposition No. 91161373

Opposer's Exhibit 94

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice To Take Deposition was served by telefacsimile and first class mail, postage prepaid, this 24<sup>th</sup> day of October, 2006, on the following:

G. Franklin Rothwell  
Brian E. Banner  
ROTHWELL, FIGG, ERNST & MANBECK P.C.  
1425 K Street, NW, Suite 800  
Washington, DC 20005  
Fax: (202) 783-6031

\_\_\_\_\_



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Your submission has been received by the USPTO.  
The content of your submission is listed below.  
You may print a copy of this receipt for your records.

ESTTA Tracking number: **ESTTA105882**

Filing date: **10/24/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                               |                                                                                                                           |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| <b>Proceeding</b>             | 91161373                                                                                                                  |
| <b>Party</b>                  | Plaintiff<br>American Italian Pasta Company                                                                               |
| <b>Correspondence Address</b> | THOMAS H. VAN HOOZER<br>HOVEY WILLIAMS LLP<br>2405 GRAND BLVD. SUITE 400<br>KANSAS, MO 64108<br><br>clb@hoveywilliams.com |
| <b>Submission</b>             | Plaintiff's Notice of Taking Testimony                                                                                    |
| <b>Filer's Name</b>           | Thomas H. Van Hoozer                                                                                                      |
| <b>Filer's e-mail</b>         | tvh@hoveywilliams.com, clb@hoveywilliams.com,<br>krb@hoveywilliams.com                                                    |
| <b>Signature</b>              | /Thomas H. Van Hoozer/                                                                                                    |
| <b>Date</b>                   | 10/24/2006                                                                                                                |
| <b>Attachments</b>            | NOTICE OF DEPOSITION for Anne Willoughby.pdf ( 2 pages )(33333 bytes )                                                    |

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Willoughby

Q V. of ANN Willoughby  
(re: updated)

Ex. 95

Ann Willoughby

Work: Willoughby Design Group  
602 Westport Road  
Kansas City, MO 64111  
Phone: 816-561-4189  
Fax: 816-561-5052

Home: 1025 W. 60<sup>th</sup> Terrace  
Kansas city, MO 64113  
Phone: 816-333-6417  
Fax: 816-333-3190

I am a brand designer and the owner and founder of Willoughby design Group. My firm specializes in brand and communications design for corporate, institutional and retail manufacturers of branded and packaged goods.

I am currently president and CEO of Willoughby design Group located in Kansas City, Missouri. We have a staff of 18. We provide strategic services and brand identity design, positioning, naming, and design for brand communications, environment, packaged goods and services. Our clients include Hallmark Cards, Lee Jeans, Interstate Brands Corporation (Wonder Bread, Butternut, Hostess and Dolly Madison), Kauffman foundation, Playtex and Best Choice.

Willoughby Design Group has developed packaging and brand identity design for Max Factor, Oil of Olay, Camay, Weight Watchers, Pampers, Hills Science Diet, Black and Decker, among others.

Professional Associations  
AIGA National Board of Directors  
AIGA National Board for Center for Brand Experience  
AIGA Center for Sustainable Design  
AIGA Kansas City Chapter Advisory Board  
HOW Magazine Editorial Board  
Kansas City Ad Club member

Civic Boards  
Kansas City Zoo Board  
De La Salle Board

In 2005 AIGA Kansas awarded the 2005 Fellow Award to Ann Willoughby. The AIGA Fellow Award recognizes design professionals who have raised the standards of excellence in practice and conduct within their local or regional design community as well as in their local AIGA chapter. The areas of education, writing, leadership, reputation and the practice of design are considered in measuring the award candidate's significant contributions.

My company, Willoughby Design Group, has received a number of national and regional awards for brand identity design including:

2006

BrandingUSA (Graphis)  
Juror's Choice Award  
7 Awards

STEP INSIDE DESIGN 100  
2 Awards

Chen Design  
2 Awards

Omni's – American Advertising Awards (Ad Club of Kansas City)  
5 Silver Awards  
11 Bronze Awards

2005

Graphic Design America 3 (Rockport Publishers) (WDG named one of the best firms in the country)  
4 Items included

AIGA Kansas City  
Best of Show  
13 Awards

HOW International Design Award  
1 Award

HOW Self Promotion Design Annual  
4 Awards

HOW Perfect 10 Award

2004

Omni's – American Advertising Awards (Ad Club of Kansas City)

2003

Omni's – American Advertising Awards (Ad Club of Kansas City)  
3 Gold Awards  
3 Silver Awards

HOW International Design Award  
1 Outstanding Achievement Award

2 Merit Awards

2002

Omni's -- American Advertising Awards (Ad Club of Kansas City)

Best of Show in Print

4 Gold Awards

5 Silver Awards

Mature Media

Bronze Award

HOW International Design Award

International Design Annual

Graphic Design: USA

Awards for WDG Marketing Materials and Lee Jeans Press Kit

HOW Self-Promotion Competition

1 Award

HOW Magazine Self-Promotional Annual

Prism Award

2001

Omni's-American Advertising Awards (Ad Club of Kansas City)

Best of Show

6 Gold Awards

5 Silver Awards

3 Bronze Awards

HOW Magazine International Design Annual

1 Merit Award

HOW Magazine Self Promotion Competition

4 Awards

2000/2001

AAF 9<sup>th</sup> District ADDY Competition

6 ADDY Awards

4 Citations of Excellence

2001

Graphic Design: USA American Graphic Design Award

Graphis Letterhead 5

1 Award

National Mature Media Awards

2 Awards

1999/2000

AAF 9<sup>th</sup> District ADDY  
2 Citations Of Excellence

2000

Omni's – American Advertising Awards (Ad Club of Kansas City)  
4 Gold Awards  
8 Silver Awards  
7 Bronze Awards

PRINT's Regional Design Annual  
2 Awards

1999

Omni's – American Advertising Awards (Ad Club of Kansas City)  
4 Gold Awards  
5 Silver Awards  
9 Bronze Awards

1998

Omni's – American Advertising Awards (Ad Club of Kansas City)  
2 Gold Awards

1996

Omni's – American Advertising Awards (Ad Club of Kansas City)  
7 Gold Awards

1992 and 1990

Kansas City Art Director's Show  
1 Gold Award each year

1989

Kansas City Art Director's Show  
1 Silver Award

1988

University and College Designers Association  
1 Award

1988

Omni's – American Advertising Awards (Ad Club of Kansas City)  
1 Gold Award  
3 Silver Awards

1988

Kansas City Art Director's Show  
1 Silver Award

Print Magazine's Regional Design Annual  
3 Awards

1987

Communication Arts Design Annual  
1 Award

1987

Omni's – American Advertising Awards (Ad Club of Kansas City)

1 Gold Award

2 Silver Awards

1987

Kansas City Art Director's Show

6 Gold Awards

1987

New York Art Director's Show

1 Award

Print Magazine's Regional Design Annual

3 Awards

1986

Kansas City Art Director's Show

2 Gold Awards

1 Silver Award

Omni's – American Advertising Awards (Ad Club of Kansas City)

1 Gold Award

5 Silver Awards

Print Magazine's Regional Design Award

2 Awards

## **Publications**

2005

Communication Arts released its infamous Design Annual for the 46<sup>th</sup> time, which carries with it Willoughby work in two categories.

HOW magazine honors Willoughby design group for the second month in a row in their special business issue. HOW Perfect 10 is awarded to entries that exhibit a perfect marriage of aesthetic, concept, materials and production. Only ten receive the distinguished award.

Ann Willoughby takes top billings in a special "Women of Design" issue of STEP Inside Design.

Tivol's fall/winter issue of Accent: The Magazine of Luxury Living. Its pages feature an article written by our own Ann Willoughby detailing concept through completion of the luxurious new Tivol Packaging .

The Rules of the Red Rubber Ball once again proves it noteworthiness as a finalist in Mohawk Show 6, showcasing the best projects of the year printed on Mohawk paper, this publication is also a sample that reps at Mohawk will proudly distribute to designers around the country.

**Teaching Experience**

I have taught at the University of Kansas and the Kansas City Art Institute. As a visiting professor at KU I was instrumental in building a pilot program that helped graduating seniors and business create successful hiring models.

**Expert Testimony**

In June 1994, I testified as an expert witness in the field of brand design on behalf of Luzier in the case of Bath & Body Works, Inc. and Baths, Inc. v. Luzier Personalized Cosmetics in the United States District Court for the Southern District of Ohio.

Willoughby

2/21/2003 Report of Tom Willoughby

Ex. 96

American Italian Pasta Company  
v.  
New World Pasta Company

REPORT OF ANN WILLOUGHBY  
February 21, 2003

American Italian Pasta Company  
v.  
Barilla Alimentare S.P.A  
*Opposition No. 91161373*  
**Opposer's Exhibit 96**

1. I am a brand designer and the owner and founder of Willoughby Design Group. My firm specializes in brand and communications design for corporate, institutional and retail manufacturers of branded and packaged goods. I have over 30 years experience as a professional designer and brand consultant. I have authored an article entitled "the Design Capital of America," which appeared in Ingram's Magazine November 2002 edition. A copy is attached.

2. I have been retained by Hovey Williams, LLP on behalf of American Italian Pasta Company to review the written submissions to the court, including the complaint, the answer and counterclaim, the motions and responses, and the exhibits thereto, the dried pasta sections of markets, including displays of the Mueller's dry pasta products, the use of advertising slogans on packaging for consumer products or advertising of such slogans, any other materials necessary to conduct a study, and preparation of a report setting forth my finding and opinions in the case of AIPC v. New World Pasta now pending in the United States District Court for the Western District of Missouri, Western Division.

3. I am currently President and CEO of Willoughby Design Group located in Kansas City, Missouri. We have a staff of 18. We provide strategic services and brand identity design, positioning, naming, and design for brand communications, environments, packaged goods and services. Our clients include Hallmark Cards, Lee Jeans, Interstate Brands Corporation (Wonder Bread, Butternut, Hostess and Dolly Madison), The Kauffman Foundation, Playtex and Best Choice.

4. Willoughby Design Group has developed packaging and brand identity design for Max Factor, Oil of Olay, Camay, Weight Watchers, Pampers, Hills Science Diet, and Black and Decker, among others.

5. I provide advice to companies on brand and trademark issues and occasionally I have consulted with law firms on issues involving brand, trademark and trade dress.

6. In June 1994, I testified as an expert witness in the field of brand design on behalf of Luzier in the case of Bath & Body Works, Inc. and Baths, Inc. v. Luzier Personalized Cosmetics in the United States District Court for the Southern District of Ohio.

7. In addition to the clients that Willoughby Design Group serves, I am active on two National Design Boards. As a board member of AIGA (American Institute of Graphic Arts) I am responsible to 17,000 design professionals and students in design schools by providing guidance on ethics, business practices and advice on design issues. The AIGA board helps set design policy for our members and is the leading advocate for design thinking and education in the US. I am currently working on developing new standards for judging the AIGA 365 design competition on Brand Strategy and Brand Design Systems (this includes packaging). The AIGA 365 competition is the premier graphic design competition in the US. I am a judge in this year's show for Comprehensive Brand Strategies and Corporate Communications Design. I was also a judge for the 2002 competition and the 1999 competition. I am helping develop a pilot program for Executive Design Leadership at Harvard in August 2003.

18. The phrase, "America's Favorite" is an expression that has been used since the founding of our country to express patriotic ideals. A Google search turned up 647,000 uses of this phrase (see exhibit G) and most of these are pure puffery, i.e. "America's Favorite Son." The most important point I wish to make is that the phrase "America's Favorite" has multiple meanings. The phrase has no inherent specific subjective meaning or factual (objective) meaning. Only when a company links a specific claim directly to the words "America's Favorite" does the phrase acquire a specific meaning to the consumer, i.e. America's Favorite Mustard (is #1 in US sales.) A product can be #1 in sales or market share, but the phrase "America's Favorite" does not imply either a subjective or factual meaning until the manufacturer indicates why the product is America's favorite. In the case of Mueller's the consumer can "Taste why Mueller's is America's favorite pasta." This phrase is completely subjective and is considered puffery by consumers. In my experience if communicating the fact that the product is #1 in sales is important, companies will state a specific claim.

19. The Mueller's brand has evolved over a long period and the trade dress elements of the brand identity that are part of the trademark were first used starting in the early 1900's and thus have equity with consumers. The first use of the phrase "America's Favorite" on the Mueller's packaging was in the mid-fifties.

20. Mueller's brand identity (image) and trade dress was established over the past 100 years. Over the decades, consumers and generations of families have purchased the Mueller's brand based on their family experience and recognition of the product through advertising, promotions and packaging. Of these three forms of brand communication, product packaging is the most critical in terms of providing consistent visual and verbal clues and signals so that consumers can locate the product in self-service grocery chains. Notice how beer, Coke, Campbell's Soup and most packaged good products change in very small steps over the years. Even when commercials change the core products, package design and trade dress features remain consistent on TV and in the store. Coke is associated with red, Wonder Bread owns dots, BMW owns the "Ultimate Driving Machine," Hush Puppy owns "The World's Most Comfortable Shoe," Chevy owns "Like a Rock". Manufacturers literally own these trade dress elements because consumers associate these visual and verbal words and graphics with the brands they buy.

21. It was the early positioning of Mueller's as an American brand, expressed in packaging through the white package with patriotic colors and symbols, that established the brand heritage that would help Mueller's build a lasting consumer bond as a trusted brand.

Advertising, pasta shapes (with American names like elbow, noodles, shells, twist, along with American recipes reinforced the association of Mueller's with American pride, home cooking in war time and peace throughout the 20<sup>th</sup> century.

Note in Exhibit B, Mueller's packaging from 1914 (the first sample found). The packaging design has remained true to their core brand trade dress although the fonts and images have been updated. Today's packaging still has dominant blue ends with a small red stripe and a white field where the brand name and brand elements are used. From 1914 until 2003 the Mueller's name is consistently red. The first use (that we have) of the flag as a trademark is in 1914. In fact, people referred to Mueller's as the flag brand during the early 1900s. Today the flag is used in a more modern form as part of the trade

I am a founding member of the AIGA Center for Brand Experience, a national organization that has over 300 US members from many disciplines that promote dialogue on the impact of brands and modern culture on global society. We are considered to be one of the leading sources of brand thinking in the United States. See also extended bio information attached.

8. My compensation for my work in this matter is at the rate of \$350 per hour, my associate's rate is \$ 150 per hour.

9. In conducting my investigation in this case, I have reviewed the complaint, counterclaim, motions, responses on summary judgments and the attached exhibits, the Wind study, and other documents produced by AIPC.

10. I reviewed a variety of products marketed to the public.

11. I have visited grocery chains in the Washington DC area, Easton, Maryland, Kansas City, and the commissary in Leavenworth, Kansas. I purchased and reviewed the packaging of pasta products manufactured by AIPC, New World Pasta and Barilla, plus a few other imported Italian brands. See Exhibit A.

12. I have reviewed literature, promotions, advertising, and packaging developed by Mueller over the past 100 years. I have reviewed the websites of the parties involved. See time line Exhibit B.

13. I have reviewed articles such as that recently appearing in the Wall Street Journal and researched on the internet and in trade books to document examples of puffery as an American tradition in brand names and slogans used in commerce over the past century. See exhibits C-G.

14. As a practicing design strategist, I have extensive experience in consumer-packaged goods sold in grocery, drug and retail chains. I am qualified to comment on brand development and proprietary components of trade dress such as symbols, colors, logos, words, packaging and package forms (proprietary shapes as with the Coke bottle). I also understand how these elements work together on a package and as a shelf set to create brand equity for the manufacturer. My company has developed and managed major brands of packaged goods for years. For example, we have developed extensive consumer research materials in an effort to help Wonder Bread, Butternut, Hostess and Dolly Madison brand managers understand consumer's perception of the equity or value in elements of their trade dress. We test names and trademark elements, like the heart icon on Hostess. We look at trade dress colors and patterns like the blue checkerboard pattern on Butternut or the dot pattern on Wonder Bread. As we "evolve" the brand and packaging design it is critical to have feedback and permission from the consumer to change even the smallest detail because any disconnect with the consumer whether it be color, words or icons can impact sales if consumers are confused about the brand.

15. It is my opinion that Mueller's use of the words "America's Favorite Pasta" is pure puffery. I will provide examples and historical insight that shows consumers not only know the difference between puffery and fact, but also embrace puffery as a shared cultural and emotional tradition of commerce.

dress and brand identity as a more symbol icon (stars and stripes) than a descriptive symbol. See Exhibit H

22. In conclusion, these are my observations:

- The phrase "America's Favorite Pasta" has multiple meanings that are subjective as used by Mueller's.
- The word "favorite" is subjective and has hundreds of meanings.
- Mueller doesn't use the statement "America's Favorite Pasta" in conjuncture with one of the possible measurable meanings of favorite, i.e. number one in sales, market share etc.
- The only reference to the meaning of "America's Favorite Pasta" on the packaging is "taste" which is also a subjective term.
- AIPC's use of the term "America's Favorite Pasta" on Mueller's packaging is puffery and has no impact on the purchasing decision of the consumer other than brand recognition.
- Mueller's has used the phrase "America's Favorite" beginning in the 1950's on either packaging or in promotions.
- The phrase "America's Favorite Pasta," the colors, logo, patriotic symbols and American associations (as distinct from Italian, see Exhibit I) are all part of Mueller's long brand heritage and are familiar to generations of American families.
- Mueller's brand heritage is expressed in these trade dress features, evolved over 100 years with cultural and commercial acceptance.
- All of these trade dress features, including the phrase "America's Favorite Pasta," serve as a trademark function and help consumers recognize the Mueller's brand.

  
Ann Willoughby Date

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Ann Willoughby

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Date

## **Ann Willoughby**

### **Work: Willoughby Design Group**

602 Westport Rd

Kansas City, MO 64111

Phone: 816-561-4189

Fax: 816-561-5052

Home: 1025 W. 60<sup>th</sup> Terrace

Kansas City, MO 64113

Phone: 816-333-6417

Fax: 816-333-3190

I am a brand designer and the owner and founder of Willoughby Design Group. My firm specializes in brand and communications design for corporate, institutional and retail manufacturers of branded and packaged goods.

I am currently President and CEO of Willoughby Design Group located in Kansas City, Missouri. We have a staff of 18. We provide strategic services and brand identity design, positioning, naming, and design for brand communications, environments, packaged goods and services. Our clients include Hallmark Cards, Lee Jeans, Interstate Brands Corporation (Wonder Bread, Butternut, Hostess and Dolly Madison), Kauffman Foundation, Playtex and Best Choice.

Willoughby Design Group has developed packaging and brand identity design for Max Factor, Oil of Olay, Camay, Weight Watchers, Pampers, Hills Science Diet, Black and Decker, among others.

### **Professional Associations**

AIGA National Board of Directors

AIGA National Board for Center for Brand Experience

AIGA Kansas City Chapter Advisory Board

HOW Magazine Editorial Board

Kansas City Ad Club member

### **Civic Boards**

Kansas City Zoo Board

De La Salle Board

My company, Willoughby Design Group, has received a number of national and regional awards for brand identity design including:

- a. 2002 – How Magazine Self-Promotion Annual
- b. 2002 Prism Award
- c. 2001 Omni's – American Advertising Awards (Ad Club of Kansas City)
  - Best of Show
  - 6 Gold Awards
  - 5 Silver Awards
  - 3 Bronze Awards

- d. 2001 – How Magazine International Design Annual  
1 Merit Award
- e. 2001 – How Magazine Self Promotion Competition  
4 Awards
- f. 2000/2001 – AAF 9th District ADDY Competition  
6 ADDY Awards  
4 Citations of Excellence
- g. 2001 – Graphic Design:usa American Graphic Design Award
- h. 2001-Graphis Letterhead 5  
1 Award
- i. 2001 – National Mature Media Awards  
2 Awards
- j. 1999/2000 – AAF 9th District ADDY Competition  
2 Citations of Excellence
- k. 2000 Omni's – American Advertising Awards (Ad Club of Kansas City)  
4 Gold Awards  
8 Silver Awards  
7 Bronze Awards
- l. 2000 – PRINT's Regional Design Annual  
2 Awards
- m. 1999 Omni's – American Advertising Awards (Ad Club of Kansas City)  
4 Gold Awards  
5 Silver Awards  
9 Bronze Awards
- n. 1998 Omni's – American Advertising Awards (Ad Club of Kansas City)  
2 Gold Awards
- o. 1996 Omni's – American Advertising Awards (Ad Club of Kansas City)  
7 Gold Awards
- p. 1992 and 1990 – Kansas City art Director's Show  
1 Gold Award each year
- q. 1989 – Kansas City Art Director's Show  
1 Silver Award
- r. 1988 – University and College Designers Association  
1 Award

- s. 1988 Omni's – American Advertising Awards (Ad Club of Kansas City)
  - 1 Gold Award
  - 3 Silver Awards
- t. 1988 – Kansas City Art Directors Show
  - 1 Silver Award
- u. Print Magazine's Regional Design Annual
  - 3 Awards
- v. 1987 – Communication Arts Design Annual
  - 1 Award
- w. 1987 Omni's – American Advertising Awards (Ad Club of Kansas City)
  - 1 Gold Award
  - 2 Silver Awards
- x. 1987 – Kansas City Art Director's Show
  - 6 Gold Awards
- y. 1987 – New York Art Director's Show
  - 1 Award
- z. 1987 – Print Magazine's Regional Design Annual
  - 3 Awards
- aa. 1986 – Kansas City Art Director's Show
  - 2 Gold Awards
  - 1 Silver Award
- bb. 1986 Omni's – American Advertising Awards (Ad Club of Kansas City)
  - 1 Gold Award
  - 5 Silver Awards
- cc. 1986 – Print Magazine's Regional Design Annual
  - 2 Awards

#### **Teaching Experience**

I have taught at the University of Kansas and the Kansas City Art Institute. As a visiting professor at KU I was instrumental in building a pilot program that helped graduating seniors and business create successful hiring models.

#### **Expert Testimony**

In June 1994, I testified as an expert witness in the field of brand design on behalf of Luzier in the case of Bath & Body Works, Inc. and Baths, Inc. v. Luzier Personalized Cosmetics in the United States District Court for the Southern District of Ohio.



## THE DESIGN CAPITAL OF AMERICA IT'S WELL WITHIN OUR REACH

Ingram's October cover headline, "Building a Greater Kansas City, The Architectural/Design Capital of America," caught my attention. I love the sound of "The design capital of America" as in "I am from Kansas City, you know, the design capital." But is it possible? Or even desirable?

I think it is not only possible for Kansas City to be one of the leading design centers in the world, it is one of the best opportunities for KC to succeed as an economic leader in coming decades. Please allow me to explain and perhaps paint a somewhat optimistic, but entirely plausible, picture of how this scenario might unfold.

Richard Florida, author of *The Rise of the Creative Class*, says, "Human creativity—the ability to generate and implement new ideas—is the key to economic growth." If this is true, and I believe it is, Kansas City should welcome talented young designers, scientists, engineers, architects, researchers, artists and writers with open arms. We should support and nurture the creative communities that already exist.

Back in the 1970s, I started my design business in the newly developed Westport Square. It was a moment when almost every business in Westport was run by a young entrepreneur. Westport was a cluster of creative people who fed off of each other's enthusiasm, ideas and mutual support. And everyone wanted to be near what was then Kansas City's creative epicenter. However, an important ingredient in Westport's early success was the corporate and civic investment, both economic and social.

So what will it take for Kansas City to become a creative design center in this decade when the bottom line is often the most immediate factor in determining our investment strategies?

Perhaps we need a better understanding of the value-link between the creative factor and Kansas City's future economic, social and cultural health.

The creative factor is about investing in people and the creative environment that nurtures them. No one could have predicted that Joyce Hall would have started a social

expression empire or that Ewing Kauffman would build a multi-billion dollar pharmaceutical company.

We became the engineering hub in the early twentieth century because bright young engineers like Clinton Burns and Robert McDonnell, E.B. Black and Tom Veatch were on the leading edge of solving the technical and geographic transportation problems of their day. They built bridges, clean water and sewage facilities, tunnels, highways, airports, power plants: the physical infrastructure for our young country.

Because of this legacy, our engineering firms design the most famous stadiums in the world today.

Because of Joyce Hall's legacy to design, Hallmark is still able to recruit top design talent out of the best design schools and pay them competitive national wages.

The ability of a city to attract the best creative minds and knowledge-based workers ultimately helps business and fosters entrepreneurs (think Hallmark, Cerner, Sprint, Marion Labs, Black & Veatch). As companies move from tangible, physical assets as their primary sources of wealth to intellectual capital, these young minds will create new wealth in patents, brands and

processes that will drive growth and value in the future.

One way to realize this vision of growth is to invite and support the next generation of KC business. Be a mentor. Share your passion and expertise. Help nurture ideas and show enthusiasm for fledgling efforts. By being responsive and open to creative new ideas, the arts, science and technology, you are surely contributing to a stronger (and more interesting) Kansas City business community.

And, to the possibility that we all can proudly say we are from "the design capital of the United States." ■

*Ann Willoughby is Founder and President of Kansas City-based Willoughby Design Group founded in 1978. She is on the AIGA National Board of Directors and the steering committee of AIGA Brand Experience. You can reach her at [ann@willoughbydesign.com](mailto:ann@willoughbydesign.com) or at 816-561-4189.*

**One way to realize this vision  
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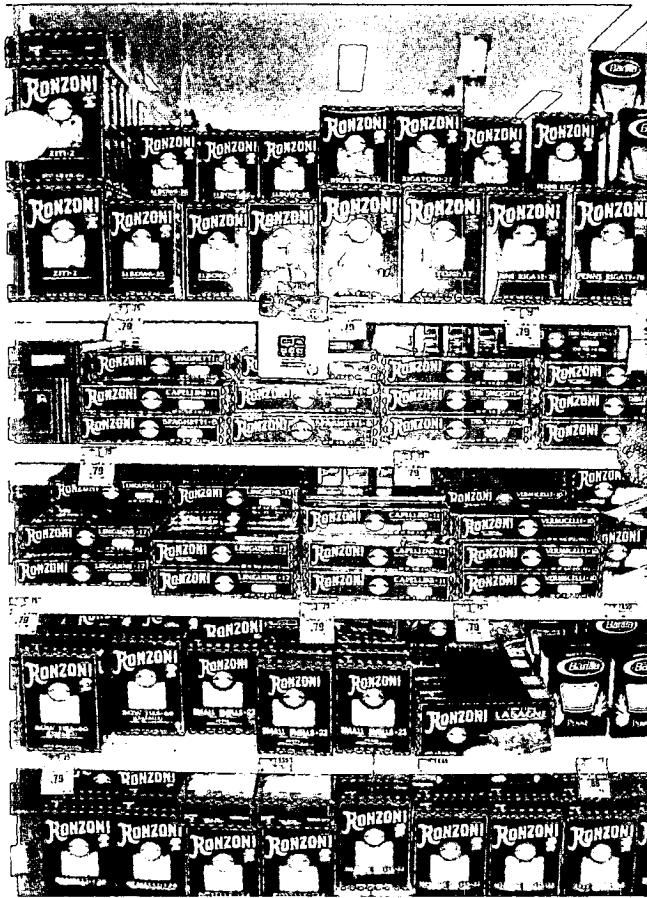
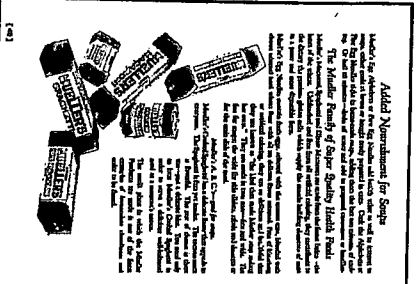
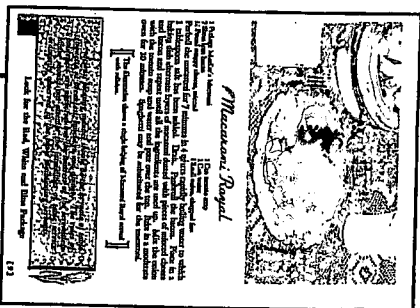
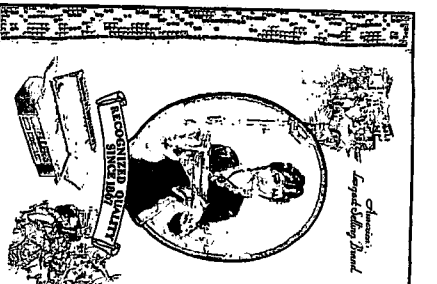
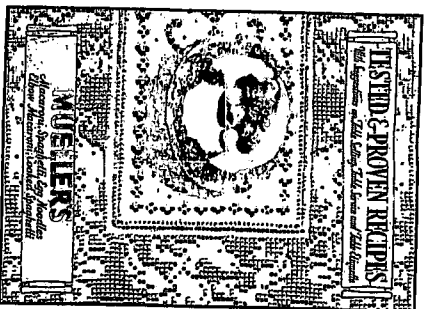
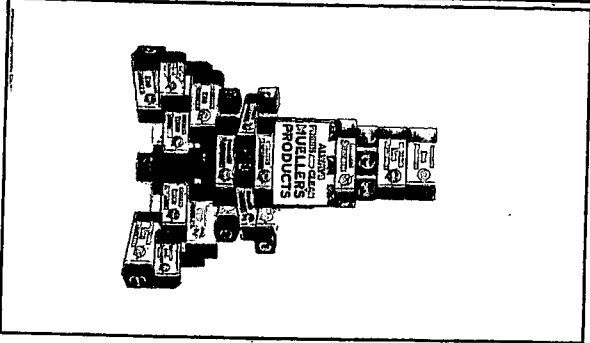
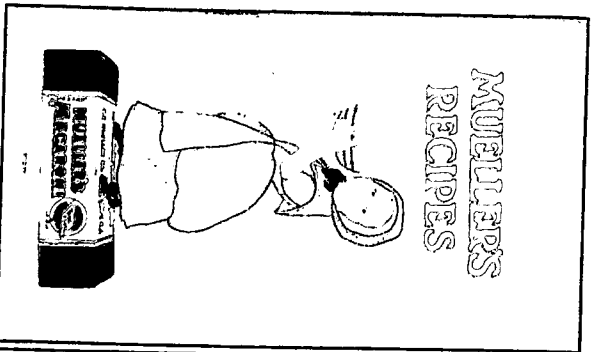


Exhibit A

# Exhibit B



1893

1914

1930

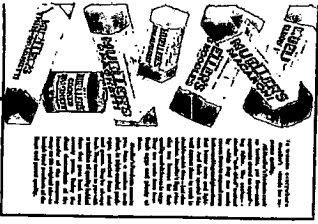
Charles Frederick  
Mueller's homemade  
egg noodles first  
appeared on grocery  
store shelves.



The Flag Brand

Look for the Red, White and Blue Package

*America's  
Longest Selling Brand*



*Is a change from potatoes*  
No Peeling

**MUELLER'S**  
EGG NOODLES

Better Taste  
Easy to Prepare  
Boil it 9 Minutes

**MUELLER'S EGG NOODLES**

IMPORTED - The Best Flour and Eggs  
Purely the Artificial Flour Used

**FACTORY - Modern, Clean, American**  
No Yeast - No Additives and No Artificial  
Will Keep Clean and Fresh

C.F. Mueller & Co., Inc., Chicago, Ill.

**MUELLER'S ELBOW MACARONI**

REGISTERED U.S. PATENT OFFICE

**MUELLER'S**  
ELBOW MACARONI

AMERICAN

1937

1940s

1947

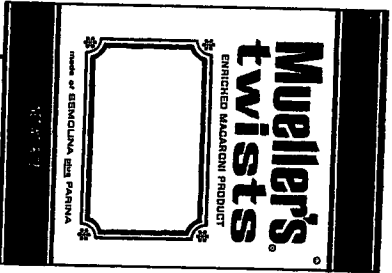
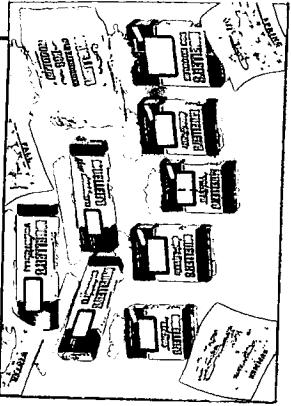
1949

To women everywhere  
"Mueller's" stands for up-  
per quality.

**FACTORY - Modern, Clean, American**

The Mueller family  
sells their company  
to a New York Law  
School beneficiary.

**AMERICAN**



1950's

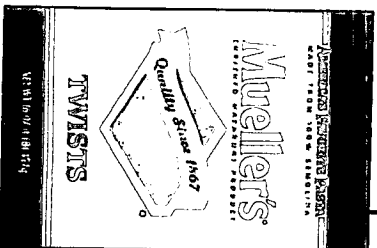
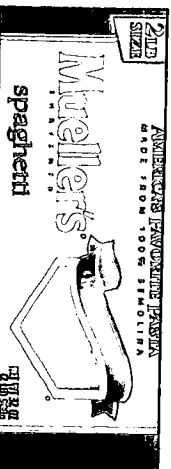
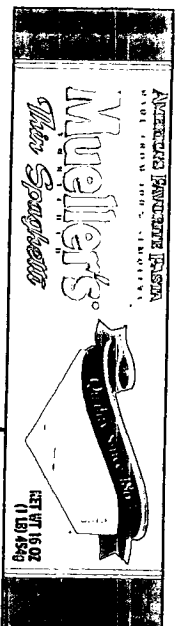
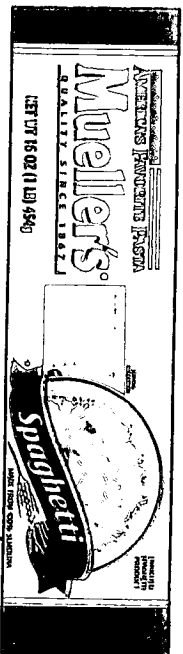
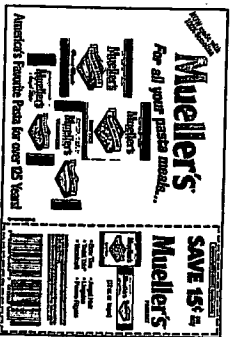
First known use of  
twists' favorite on  
packaging.



1976

Forrester-Mickelson, Inc.  
purchases Mueller's from the  
New York Law School

1978



1983

1995

1997

1998

1999

2000

2001

2002

2003

APC purchases the exclusive rights to all aspects of the Mueller's pasta business - including the responsibility of packaging, distribution, pricing and marketing of the

American Italian Pasta company (APC) becomes the exclusive manufacturer of Mueller's for Bestfoods.

America's Favorite Pasta for over 125 Years!

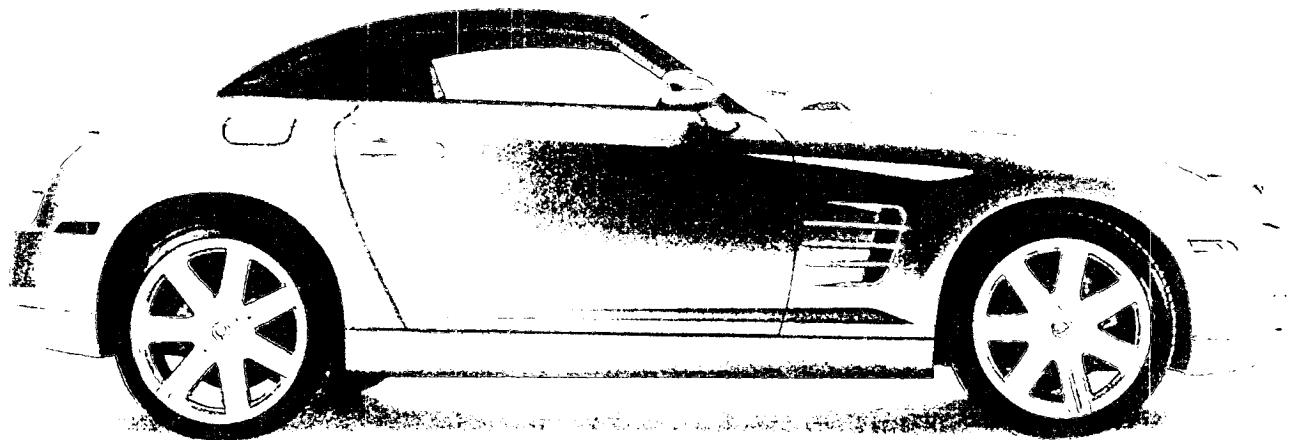
AMERICAN FAVORITE PASTA

APC purchases the exclusive rights to all aspects of the Mueller's pasta business - including the responsibility of packaging, distribution, pricing and marketing of the

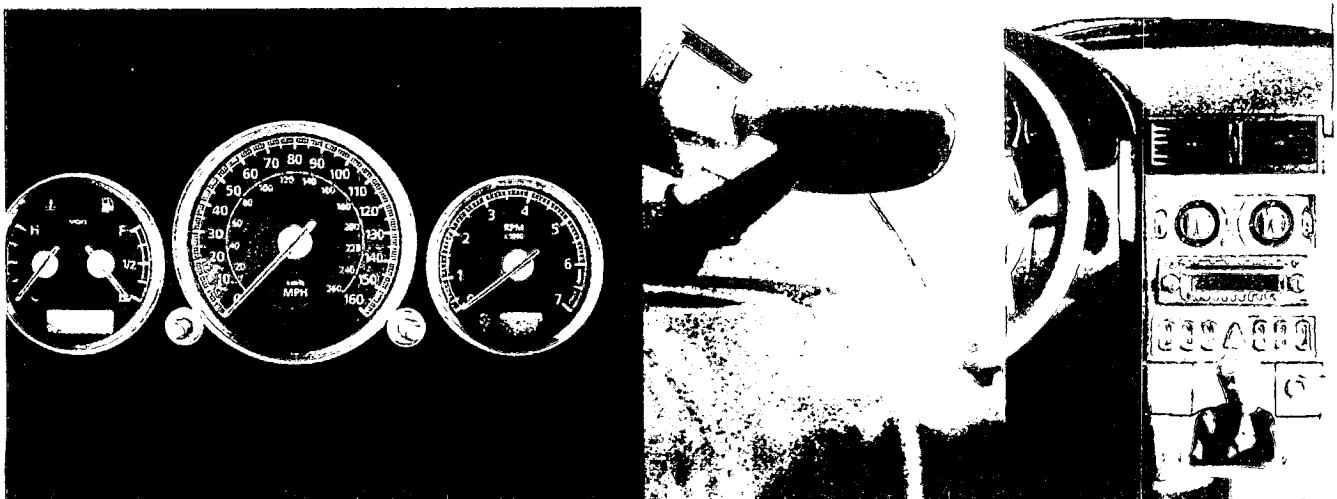
AMERICAN FAVORITE PASTA



THE CHRYSLER CROSSFIRE



ARRIVING SPRING 2003



The Majestic Steakhouse-  
"The finest in beef, jazz and fun!"

\* THE MAJESTIC STEAKHOUSE \*



931 BROADWAY  
KANSAS CITY, MISSOURI 64105-1508

816-471-8484 (voice)  
816-471-8686 (fax)  
majesticsteak@mindspring.com  
info@majesticgroup.com (e-mail)

COME JOIN IN THE FUN!

[Specialties]  
[Lunch Menu] [Dinner Menu]  
[The Prodigal Son Club] [Independent Review]  
[Entertainment] [Gifts] [Map/Directions]

Located at 10th and Broadway in the Historic Fitzpatrick Saloon Building in Downtown Kansas City, The Majestic Steakhouse offers the best in Beef, Jazz and Fun! The old Fitzpatrick Building was originally a saloon and bordello built in 1911. During the liquor Prohibition of the 1930's, the basement was used as a Speakeasy and a meeting place for many of Kansas City's business and political leaders. The building was renovated in the mid-1980's to its former grandeur and is listed on the National Register of Historic Places. Long a tradition in Kansas City, The new Majestic Steakhouse opened its current location in March 1993, reviving a tradition of Fantastic Steaks and Great Times that was famous for forty years at the old Majestic at East 31st Street and Holmes Road.

The Golden Ox-  
"Kansas City's Finest Steak"



**THE GOLDEN OX**  
Kansas City's finest steak

the Golden Ox menu

Our steaks are broiled over a sharp, hot flame from real charcoal that finishes the meat to a sear on the outside - juicy and tender within - seals the rich juices that add to the tantalizing taste and aroma.




**From Our Hickory Charcoal Broiler**

|                                                                                                                                                                                                            |                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| <p><b>Kansas City Strip</b><br/>The steak was born here. (our #1 Seller). for the hearty eater, a boneless sirloin from premium steers, aged to perfection.<br/>24oz. (Bone-In) \$32.95, 14oz. \$25.95</p> | <p><b>Filet Mignon</b><br/>Of the finest beef tenderloin<br/>10oz. \$26.95, 7oz. \$21.95</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|


MENU  
RESERVATIONS  
HISTORY  
MAIL ORDER STEAKS  
CONTACT US  
HOME

The Hereford House-  
"The Best Steak in Kansas City"

**ANDERSON**  
RESTAURANT GROUP




HEREFORD HOUSE



HEREFORD HOUSE  
ORDER STEAKS AND  
GIFT CERTIFICATES  
ONLINE

**P**  
PIERPONT

**HR**  
HOLLYWOOD ROOM

  
CATERING SOLUTIONS


\*\*\* KANSAS CITY'S ORIGINAL \*\*\*

**HEREFORD**  
JANUARY 1957

← KANSAS CITY • LEAWOOD • LAWRENCE • INDEPENDENCE →

Special Steak Package Offers for Local Pickup!

Order Gift Certificates HERE!

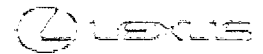
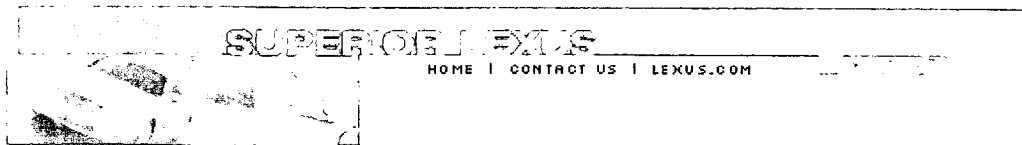


**BEST STEAK**

Hereford House chefs excel in the art of selecting the finest beef, patiently aging it to the peak of tender, flavorful perfection and serving it to you straight from the charcoal grill savory, succulent and sizzling. The magic of the Hereford House — a relaxed congenial atmosphere, superb food, your favorite cocktails and friendly service — makes your visit a special occasion.

Join our exclusive Email Benefits Club HERE!

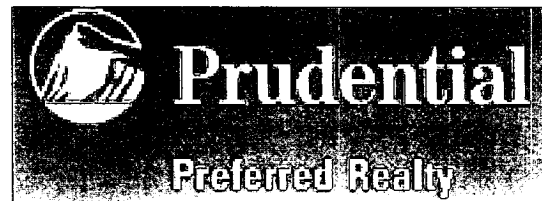
A restaurant only stays in business for 44 years if it serves the **BEST STEAK IN TOWN!**



Unilever Bestfoods  
North America

Preferred Mutual  
Insurance Company

**MIDWEST EXPRESS AIRLINES**  
*The best care in the air.®*

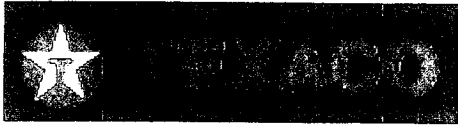


**UMB**  
Financial  
Corporation



The Ultimate  
Driving Machine

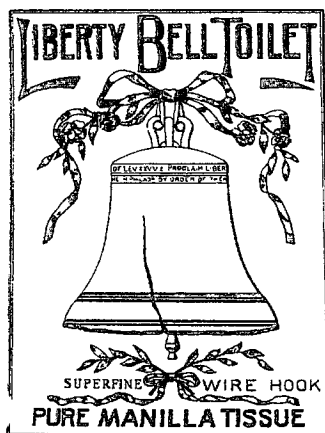
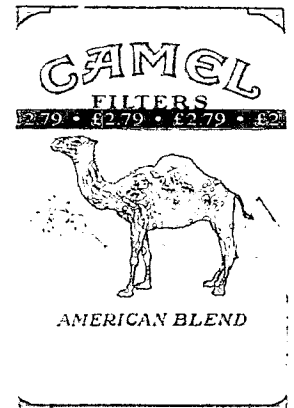




*John Hancock*  
Insurance for the Unexpected  
Investments for the Opportunities™



**Mobil**



**Bank of America.**



**AMERICA WEST AIRLINES**

**American Airlines**



Exhibit F

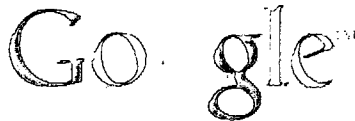
16. To provide context for the evaluation of the Mueller's brand it is useful to understand the history of puffery in early advertising and good package design. Puffery is a tradition in American commerce. Since the inception of branded products manufacturers have used names, slogans and symbols associated with grand ideals to boost confidence, sales and brand awareness of their products. It is both cultural and human nature that people want to buy products from companies who claim they are the best, the favorite, the biggest, the ultimate, etc. People understand intuitively the implications in names and slogans as exaggerated claims. It is part psychological and part economic that puffery is acceptable as a cultural agreement. My favorite restaurant, the best car made, etc. Our American tradition and economic model is built on that desire to improve ones life through the use of brand name products. The cosmetic market would collapse if women didn't desire to look better, all the while knowing that most of what they see and read is puffery. Only when a company is specific about measurable and factual qualities or properties of its products does a consumer expect truth, i.e. ingredient labels, nutrition facts, fabric content and made in the USA. A Chrysler ad in the New York Times, Feb 16, 03 reads, "...6 speed transmission," a measurable quality. However, it continues on "...50% American imagination, 50% German precision, 100% passion," which is puffery. See Exhibit C. Even though specific percentages of each quality are given, the consumer understands that you can't measure precision, imagination or passion, but you can measure how many speeds a transmission has. In our desire to believe Chrysler is a better car, we allow Chrysler to puff away. In Kansas City, a city famous for its steak, three different steakhouses claim the best steak in the city, but who is to say which one really is the best? See Exhibit D. Is a car bought from Superior Lexus any different than one bought from any other Lexus dealer? Is UMB really America's Strongest Bank? Other puffery examples in names and slogans: Best Western, Best Foods, Preferred Mutual Insurance Company, The Greatest Show on Earth, BMW, The Ultimate Driving Machine, Bayer, The World's Best Aspirin, Hush Puppies, The Earth's Most Comfortable Shoe, Prudential, Preferred Reality. See Exhibit E

17. At the same time in the early days of packaged goods development, when Mueller's was a new brand, it was common to adopt patriotic imagery and names that associated the product with ideas that consumers respected. Association has been used for the last 150 years to imply that one brand is better or more desirable than the competition. Manufacturers have always used associations to imbue their products with status and increase desire to purchase. Association with American symbols is one of the most long-standing traditions in branding and advertising in our country. Use of the American flag, the colors red, white and blue, and associations with American ideals is part of our cultural heritage and common agreement as both citizens and consumers. "Being American and showing patriotism is good for the country and good for commerce," we all have heard. Patriotic products reinforce our sense of belonging and purpose as a citizen of the US. Emotionally, people have always responded to products that claim to be American because they symbolize values we share as a culture. Association with famous Americans is common, and it doesn't necessarily mean they founded or support the brand, i.e. John Hancock, Dolly Madison, Washington Mutual and Franklin Mint. Other examples of companies who use a patriotic or American association to suggest a powerful or large geographic reach are First National Bank, Capitol Records, Uncle Sam's Cereal, Camel Cigarettes (American Blend), National Car Rental, American Airlines, America West Airlines, Drive the USA in Your Chevrolet, Bank of America, the New York Yankees, and Columbia Tristar Entertainment (Statue of Liberty). See Exhibit F.



#### History of the Hereford House

On October 1, 1957, Jack C. Webb began a Kansas City tradition—the Hereford House—that endures to this day. Located close to stockyards that processed the finest corn-fed beef from Missouri, Kansas, Iowa, and Nebraska, the Hereford House popularity was natural in a city considered the major beef capital of the Midwest. "Locals" from as far away as Sedalia traveled to dine on America's finest steaks. Dinner at the Hereford House was on the itineraries of Kansas City visitors.



[Advanced Search](#) [Preferences](#) [Language Tools](#) [Search Tips](#)

america's favorite

Google Search

[Web](#)

[Images](#)

[Groups](#)

[Directory](#)

[News](#)

Searched the web for america's favorite.

Results 1 - 10 of about 707,000. Search took 0.06 second.

#### Landover Baptist: Where The Worthwhile Worship. Unsaved Unwelcome ...

A Handful of Bush Supporters Take To the Streets In Support of the President

The national counter-protest was organized by FreeRepublic.Com Read More> ...

Description: "The Largest, most powerful assembly of worthwhile Christians to ever exist." Unsaved Not Welcome!

Category: [Society](#) > [Religion and Spirituality](#) > ... > [Christianity](#) > [Parodies](#)

[www.landoverbaptist.org/](http://www.landoverbaptist.org/) - 42k - [Cached](#) - [Similar pages](#)

#### America's Favorite Golf Schools: Golf School Vacations

America's Favorite Golf Schools. 2, 3 and 5 day Golf School Vacations. ... America's

Favorite Golf Schools 1295 SE Port St. Lucie Blvd. ...

Description: Offers two, three, and five day golf vacation getaways at over 40 locations worldwide.

Category: [Sports](#) > [Golf](#) > [Instruction](#) > [Golf Schools](#)

[www.afgs.com/](http://www.afgs.com/) - 28k - [Cached](#) - [Similar pages](#)

#### QUILT - America's Favorite Quilting Magazine

Win \$250! Your quilt could be on the cover of our next issue!!! Enter our on-going Cover Contest! Meet the editor! Jean Ann Wright. Dear Quilters.. ...

Description: By Harris Publications.

Category: [Arts & Crafts](#) > [Quilting](#) > [Publications](#)

[www.quiltmag.com/](http://www.quiltmag.com/) - 17k - [Cached](#) - [Similar pages](#)

#### Click Here for Directions to our Corporate Offices

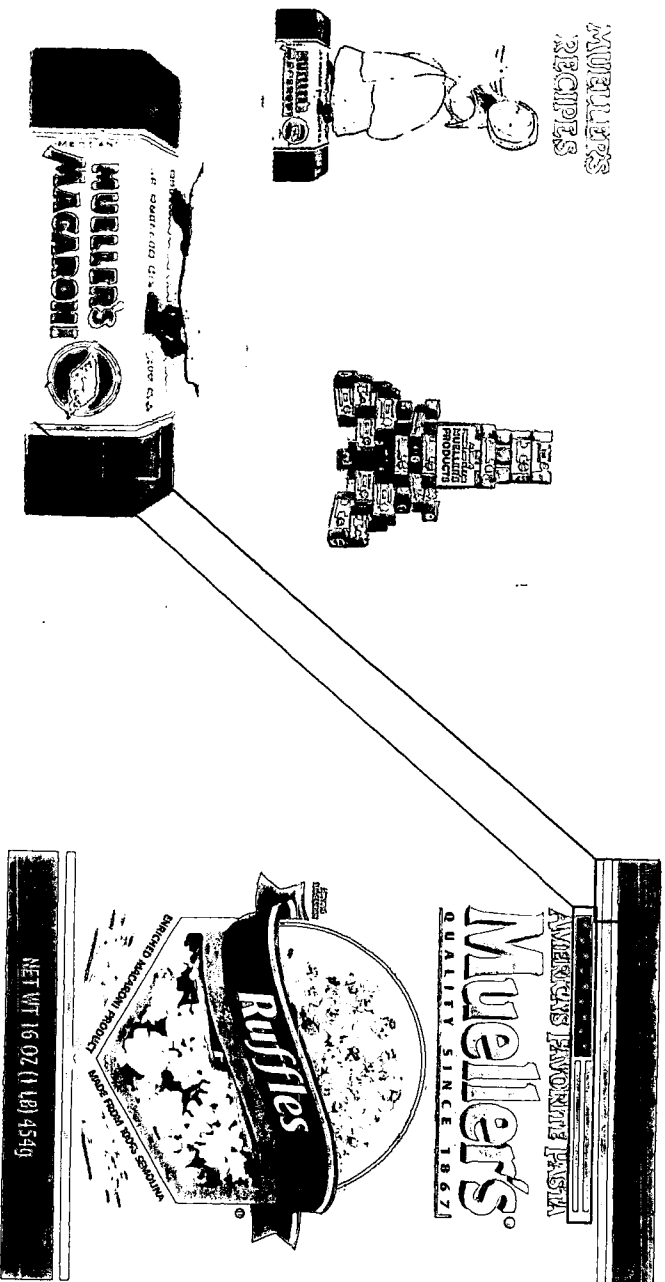
Click Here for Directions to our Corporate Offices.

Description: Brands include Oreo Cookies and Planters Peanuts. Fun stuff, information, and on-line shopping for...

Category: [Business](#) > [Food and Related Products](#) > [Snack Foods](#)

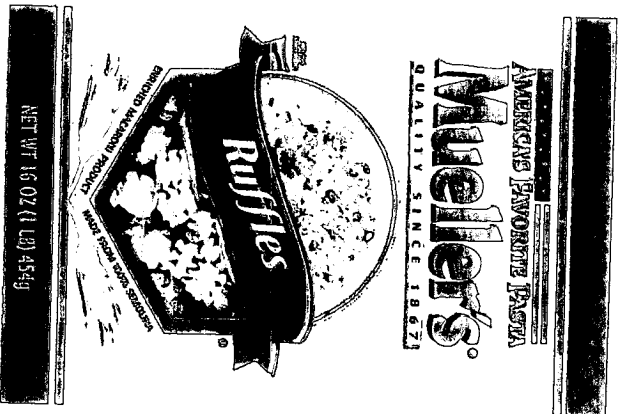
[www.nabisco.com/](http://www.nabisco.com/) - 7k - [Cached](#) - [Similar pages](#)

# Packaging Comparison, 1914 to the present

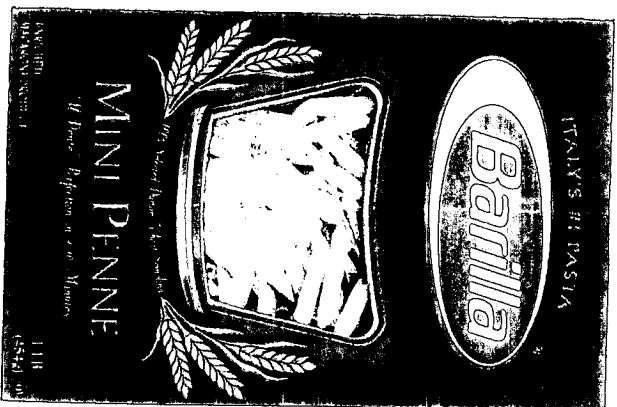


Mueller's is an American brand, with remarkably constant packaging dating back to 1914.

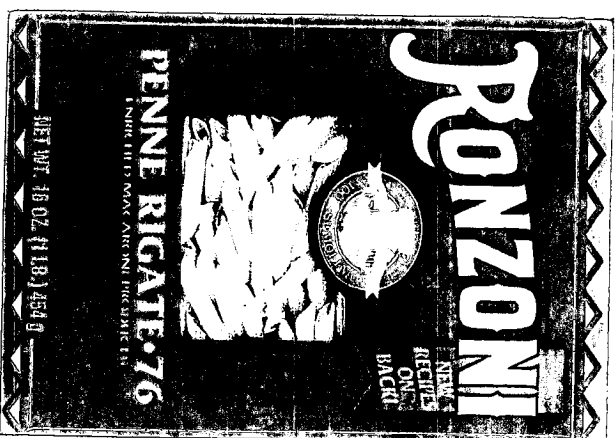
- Red white and blue package
- American Flag on package - "The Flag Brand"
- American rather than Italian pasta names and r



Dominant use of red, white, and blue  
Stars and stripes shows it is a flag brand  
American description for pasta name  
Distinctly American recipes on box.  
Mostly white package



Use of green, white and red represents the Italian flag  
Claims it is Italy's #1 pasta  
Italian description for pasta name  
Multi-lingual packaging  
Mostly blue package



Triangle pattern and type treatment  
is more Old World Style  
Italian description for pasta name  
Mostly blue package  
Distinctly Italian recipes on box

Willoughby

3/6/2006 Declaration Report  
of Ann Willoughby

Ex. 97

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERICAN ITALIAN PASTA COMPANY )

Opposer, )

v. )

BARILLA G.E.R. - Fratelli S.P.A. )

Registrant. )

Opposition No. 91161373

Mark: BARILLA - AMERICA'S  
FAVORITE PASTA

Application No. 78/136,703

Published: March 23, 2004

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**DECLARATION OF ANN WILLOUGHBY**

I, Ann Willoughby, declare:

1. I made a Report of Ann Willoughby on February 21, 2003 and a copy of that Report with the attachments is appended to this Declaration as Exhibit A. I hereby adopt Exhibit A as a part of this declaration submitted in the above-captioned proceedings. My background and experience are substantially detailed in paragraphs 1 through 7 of that report, updated as set forth in the Biography attached as Exhibit B, and I remain the President and CEO of Willoughby Design Group.
2. I have been asked by American Italian Pasta Company to provide this Declaration in support of its Opposition to Barilla's Motion for Summary Judgment in order to introduce Exhibit A and to provide further amplification of the statements made therein.
3. In addition to the work mentioned in my report, I have also reviewed a sample of a recently revised Mueller's pasta box, of which a photo is appended as Exhibit B. In adopting my prior Report appended as Exhibit A, I want to further address in

American Italian Pasta Company

v.

Barilla Alimentare S.P.A.

Opposition No. 91161373

Opposer's Exhibit 97

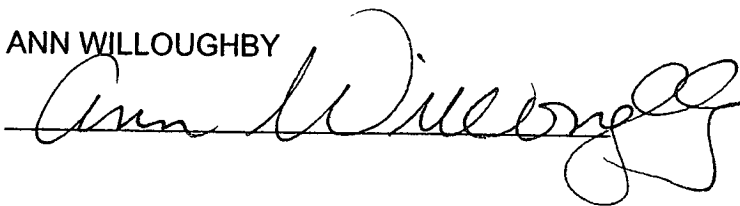
particular two of the conclusions and observations in paragraph 22 of my report.

4. First, It remains my opinion that "AIPC's use of the term "America's Favorite Pasta" on Mueller's packaging is puffery and has no impact on the purchasing decision of the consumer other than brand recognition." This said, I believe that consumers of food products in general and pasta in particular can regard a term or phrase as puffery and still associate and identify that term or phrase as a branding statement, either alone or in connection with a mark. For example, a well-known phrase in the greeting card field would be "When you care enough to send the very best." That statement is in large part puffery, suggesting to the consumer that one greeting card (in this case, Hallmark), has the "very best" cards. Nonetheless, while the consumer may give little weight to the factuality of the phrase, recognizing it as mere puffery, the consumer also draws a connection between that phrase and Hallmark, and regards it as proprietary. Midwest air – the best care in the air, UMB, America's Strongest Banks, BMW – the ultimate driving machine. Other examples of phrases which may be puffery but serve a branding function include the use of "The Best Care in the Air" by Midwest Airlines, "America's Strongest Banks" by UMB, and "The Ultimate Driving Machine" by BMW, as well as others mentioned in paragraph 20 of my report. It is my opinion that the presentation of the phrase "America's Favorite Pasta" on the Mueller's packaging (which is again evolving since my report but still retains the phrase "America's Favorite Pasta" on the front of the package), while not influencing the consumer in regard to a factual determination about the product, does associate it with the Mueller's name and that phrase does, in fact, serve as a brand identifier.

5. In the last bullet point of paragraph 22 of my report attached as Exhibit A, I also reached the conclusion that "(a)ll of these trade dress features, including the phrase 'America's Favorite Pasta,' serve as a trademark function and help consumers recognize the Mueller's brand." This reflects that a number of constituent elements may serve, either individually or collectively, to provide a brand identity. The consumer seeing the Mueller's packaging on the supermarket shelf may draw upon the different elements to identify the brand. I am of the opinion that like the Mueller's name and the red, white and blue packaging, the phrase "America's Favorite Pasta" performs a trademark function for American Italian Pasta Company. The fact that the phrase is puffery does not diminish its connection to the Mueller's brand.

The undersigned, Ann Willoughby, declares that all statements made herein are true; that all statements made herein of his own knowledge are true and that all statements made on information and believe are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the document.

ANN WILLOUGHBY

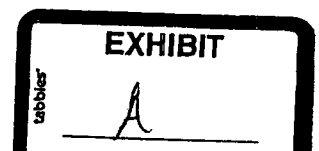
A handwritten signature in cursive script, appearing to read "Ann Willoughby", written over a horizontal line.

Date: Mar. 6, 2006

American Italian Pasta Company  
v.  
New World Pasta Company

REPORT OF ANN WILLOUGHBY

February 21, 2003



1. I am a brand designer and the owner and founder of Willoughby Design Group. My firm specializes in brand and communications design for corporate, institutional and retail manufacturers of branded and packaged goods. I have over 30 years experience as a professional designer and brand consultant. I have authored an article entitled "the Design Capital of America," which appeared in Ingram's Magazine November 2002 edition. A copy is attached.
2. I have been retained by Hovey Williams, LLP on behalf of American Italian Pasta Company to review the written submissions to the court, including the complaint, the answer and counterclaim, the motions and responses, and the exhibits thereto, the dried pasta sections of markets, including displays of the Mueller's dry pasta products, the use of advertising slogans on packaging for consumer products or advertising of such slogans, any other materials necessary to conduct a study, and preparation of a report setting forth my finding and opinions in the case of AIPC v. New World Pasta now pending in the United States District Court for the Western District of Missouri, Western Division.
3. I am currently President and CEO of Willoughby Design Group located in Kansas City, Missouri. We have a staff of 18. We provide strategic services and brand identity design, positioning, naming, and design for brand communications, environments, packaged goods and services. Our clients include Hallmark Cards, Lee Jeans, Interstate Brands Corporation (Wonder Bread, Butternut, Hostess and Dolly Madison), The Kauffman Foundation, Playtex and Best Choice.
4. Willoughby Design Group has developed packaging and brand identity design for Max Factor, Oil of Olay, Camay, Weight Watchers, Pampers, Hills Science Diet, and Black and Decker, among others.
5. I provide advice to companies on brand and trademark issues and occasionally I have consulted with law firms on issues involving brand, trademark and trade dress.
6. In June 1994, I testified as an expert witness in the field of brand design on behalf of Luzier in the case of Bath & Body Works, Inc. and Baths, Inc. v. Luzier Personalized Cosmetics in the United States District Court for the Southern District of Ohio.
7. In addition to the clients that Willoughby Design Group serves, I am active on two National Design Boards. As a board member of AIGA (American Institute of Graphic Arts) I am responsible to 17,000 design professionals and students in design schools by providing guidance on ethics, business practices and advice on design issues. The AIGA board helps set design policy for our members and is the leading advocate for design thinking and education in the US. I am currently working on developing new standards for judging the AIGA 365 design competition on Brand Strategy and Brand Design Systems (this includes packaging). The AIGA 365 competition is the premier graphic design competition in the US. I am a judge in this year's show for Comprehensive Brand Strategies and Corporate Communications Design. I was also a judge for the 2002 competition and the 1999 competition. I am helping develop a pilot program for Executive Design Leadership at Harvard in August 2003.

I am a founding member of the AIGA Center for Brand Experience, a national organization that has over 300 US members from many disciplines that promote dialogue on the impact of brands and modern culture on global society. We are considered to be one of the leading sources of brand thinking in the United States. See also extended bio information attached.

8. My compensation for my work in this matter is at the rate of \$350 per hour, my associate's rate is \$ 150 per hour.
9. In conducting my investigation in this case, I have reviewed the complaint, counterclaim, motions, responses on summary judgments and the attached exhibits, the Wind study, and other documents produced by AIPC.
10. I reviewed a variety of products marketed to the public.
11. I have visited grocery chains in the Washington DC area, Easton, Maryland, Kansas City, and the commissary in Leavenworth, Kansas. I purchased and reviewed the packaging of pasta products manufactured by AIPC, New World Pasta and Barilla, plus a few other imported Italian brands. See Exhibit A.
12. I have reviewed literature, promotions, advertising, and packaging developed by Mueller over the past 100 years. I have reviewed the websites of the parties involved. See time line Exhibit B.
13. I have reviewed articles such as that recently appearing in the Wall Street Journal and researched on the internet and in trade books to document examples of puffery as an American tradition in brand names and slogans used in commerce over the past century. See exhibits C-G.
14. As a practicing design strategist, I have extensive experience in consumer-packaged goods sold in grocery, drug and retail chains. I am qualified to comment on brand development and proprietary components of trade dress such as symbols, colors, logos, words, packaging and package forms (proprietary shapes as with the Coke bottle). I also understand how these elements work together on a package and as a shelf set to create brand equity for the manufacturer. My company has developed and managed major brands of packaged goods for years. For example, we have developed extensive consumer research materials in an effort to help Wonder Bread, Butternut, Hostess and Dolly Madison brand managers understand consumer's perception of the equity or value in elements of their trade dress. We test names and trademark elements, like the heart icon on Hostess. We look at trade dress colors and patterns like the blue checkerboard pattern on Butternut or the dot pattern on Wonder Bread. As we "evolve" the brand and packaging design it is critical to have feedback and permission from the consumer to change even the smallest detail because any disconnect with the consumer whether it be color, words or icons can impact sales if consumers are confused about the brand.
15. It is my opinion that Mueller's use of the words "America's Favorite Pasta" is pure puffery. I will provide examples and historical insight that shows consumers not only know the difference between puffery and fact, but also embrace puffery as a shared cultural and emotional tradition of commerce.

16. To provide context for the evaluation of the Mueller's brand it is useful to understand the history of puffery in early advertising and good package design. Puffery is a tradition in American commerce. Since the inception of branded products manufacturers have used names, slogans and symbols associated with grand ideals to boost confidence, sales and brand awareness of their products. It is both cultural and human nature that people want to buy products from companies who claim they are the best, the favorite, the biggest, the ultimate, etc. People understand intuitively the implications in names and slogans as exaggerated claims. It is part psychological and part economic that puffery is acceptable as a cultural agreement. My favorite restaurant, the best car made, etc. Our American tradition and economic model is built on that desire to improve ones life through the use of brand name products. The cosmetic market would collapse if women didn't desire to look better, all the while knowing that most of what they see and read is puffery. Only when a company is specific about measurable and factual qualities or properties of its products does a consumer expect truth, i.e. ingredient labels, nutrition facts, fabric content and made in the USA. A Chrysler ad in the New York Times, Feb 16, 03 reads, "...6 speed transmission," a measurable quality. However, it continues on "...50% American imagination, 50% German precision, 100% passion," which is puffery. See Exhibit C. Even though specific percentages of each quality are given, the consumer understands that you can't measure precision, imagination or passion, but you can measure how many speeds a transmission has. In our desire to believe Chrysler is a better car, we allow Chrysler to puff away. In Kansas City, a city famous for its steak, three different steakhouses claim the best steak in the city, but who is to say which one really is the best? See Exhibit D. Is a car bought from Superior Lexus any different than one bought from any other Lexus dealer? Is UMB really America's Strongest Bank? Other puffery examples in names and slogans: Best Western, Best Foods, Preferred Mutual Insurance Company, The Greatest Show on Earth, BMW, The Ultimate Driving Machine, Bayer, The World's Best Aspirin, Hush Puppies, The Earth's Most Comfortable Shoe, Prudential, Preferred Reality. See Exhibit E

17. At the same time in the early days of packaged goods development, when Mueller's was a new brand, it was common to adopt patriotic imagery and names that associated the product with ideas that consumers respected. Association has been used for the last 150 years to imply that one brand is better or more desirable than the competition. Manufacturers have always used associations to imbue their products with status and increase desire to purchase. Association with American symbols is one of the most long-standing traditions in branding and advertising in our country. Use of the American flag, the colors red, white and blue, and associations with American ideals is part of our cultural heritage and common agreement as both citizens and consumers. "Being American and showing patriotism is good for the country and good for commerce," we all have heard. Patriotic products reinforce our sense of belonging and purpose as a citizen of the US. Emotionally, people have always responded to products that claim to be American because they symbolize values we share as a culture. Association with famous Americans is common, and it doesn't necessarily mean they founded or support the brand, i.e. John Hancock, Dolly Madison, Washington Mutual and Franklin Mint. Other examples of companies who use a patriotic or American association to suggest a powerful or large geographic reach are First National Bank, Capitol Records, Uncle Sam's Cereal, Camel Cigarettes (American Blend), National Car Rental, American Airlines, America West Airlines, Drive the USA in Your Chevrolet, Bank of America, the New York Yankees, and Columbia Tristar Entertainment (Statue of Liberty). See Exhibit F.

18. The phrase, "America's Favorite" is an expression that has been used since the founding of our country to express patriotic ideals. A Google search turned up 647,000 uses of this phrase (see exhibit G) and most of these are pure puffery, i.e. "America's Favorite Son." The most important point I wish to make is that the phrase "America's Favorite" has multiple meanings. The phrase has no inherent specific subjective meaning or factual (objective) meaning. Only when a company links a specific claim directly to the words "America's Favorite" does the phrase acquire a specific meaning to the consumer, i.e. America's Favorite Mustard (is #1 in US sales.) A product can be #1 in sales or market share, but the phrase "America's Favorite" does not imply either a subjective or factual meaning until the manufacturer indicates why the product is America's favorite. In the case of Mueller's the consumer can "Taste why Mueller's is America's favorite pasta." This phrase is completely subjective and is considered puffery by consumers. In my experience if communicating the fact that the product is #1 in sales is important, companies will state a specific claim.

19. The Mueller's brand has evolved over a long period and the trade dress elements of the brand identity that are part of the trademark were first used starting in the early 1900's and thus have equity with consumers. The first use of the phrase "America's Favorite" on the Mueller's packaging was in the mid-fifties.

20. Mueller's brand identity (image) and trade dress was established over the past 100 years. Over the decades, consumers and generations of families have purchased the Mueller's brand based on their family experience and recognition of the product through advertising, promotions and packaging. Of these three forms of brand communication, product packaging is the most critical in terms of providing consistent visual and verbal clues and signals so that consumers can locate the product in self-service grocery chains. Notice how beer, Coke, Campbell's Soup and most packaged good products change in very small steps over the years. Even when commercials change the core products, package design and trade dress features remain consistent on TV and in the store. Coke is associated with red, Wonder Bread owns dots, BMW owns the "Ultimate Driving Machine," Hush Puppy owns "The World's Most Comfortable Shoe," Chevy owns "Like a Rock". Manufacturers literally own these trade dress elements because consumers associate these visual and verbal words and graphics with the brands they buy.

21. It was the early positioning of Mueller's as an American brand, expressed in packaging through the white package with patriotic colors and symbols, that established the brand heritage that would help Mueller's build a lasting consumer bond as a trusted brand.

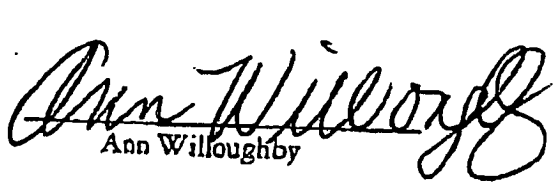
Advertising, pasta shapes (with American names like elbow, noodles, shells, twist, along with American recipes reinforced the association of Mueller's with American pride, home cooking in war time and peace throughout the 20<sup>th</sup> century.

Note in Exhibit B, Mueller's packaging from 1914 (the first sample found). The packaging design has remained true to their core brand trade dress although the fonts and images have been updated. Today's packaging still has dominant blue ends with a small red stripe and a white field where the brand name and brand elements are used. From 1914 until 2003 the Mueller's name is consistently red. The first use (that we have) of the flag as a trademark is in 1914. In fact, people referred to Mueller's as the flag brand during the early 1900s. Today the flag is used in a more modern form as part of the trade

dress and brand identity as a more symbol icon (stars and stripes) than a descriptive symbol. See Exhibit H

22. In conclusion, these are my observations:

- The phrase "America's Favorite Pasta" has multiple meanings that are subjective as used by Mueller's.
- The word "favorite" is subjective and has hundreds of meanings.
- Mueller doesn't use the statement "America's Favorite Pasta" in conjunction with one of the possible measurable meanings of favorite, i.e. number one in sales, market share etc.
- The only reference to the meaning of "America's Favorite Pasta" on the packaging is "taste" which is also a subjective term.
- AIPC's use of the term "America's Favorite Pasta" on Mueller's packaging is puffery and has no impact on the purchasing decision of the consumer other than brand recognition.
- Mueller's has used the phrase "America's Favorite" beginning in the 1950's on either packaging or in promotions.
- The phrase "America's Favorite Pasta," the colors, logo, patriotic symbols and American associations (as distinct from Italian, see Exhibit I) are all part of Mueller's long brand heritage and are familiar to generations of American families.
- Mueller's brand heritage is expressed in these trade dress features, evolved over 100 years with cultural and commercial acceptance.
- All of these trade dress features, including the phrase "America's Favorite Pasta," serve as a trademark function and help consumers recognize the Mueller's brand.

 02/21/03  
Ann Willoughby Date

## **Ann Willoughby**

### **Work: Willoughby Design Group**

602 Westport Rd  
Kansas City, MO 64111  
Phone: 816-561-4189  
Fax: 816-561-5052

Home: 1025 W. 60<sup>th</sup> Terrace  
Kansas City, MO 64113  
Phone: 816-333-6417  
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I am a brand designer and the owner and founder of Willoughby Design Group. My firm specializes in brand and communications design for corporate, institutional and retail manufacturers of branded and packaged goods.

I am currently President and CEO of Willoughby Design Group located in Kansas City, Missouri. We have a staff of 18. We provide strategic services and brand identity design, positioning, naming, and design for brand communications, environments, packaged goods and services. Our clients include Hallmark Cards, Lee Jeans, Interstate Brands Corporation (Wonder Bread, Butternut, Hostess and Dolly Madison), Kauffman Foundation, Playtex and Best Choice.

Willoughby Design Group has developed packaging and brand identity design for Max Factor, Oil of Olay, Camay, Weight Watchers, Pampers, Hills Science Diet, Black and Decker, among others.

### **Professional Associations**

AIGA National Board of Directors  
AIGA National Board for Center for Brand Experience  
AIGA Kansas City Chapter Advisory Board  
HOW Magazine Editorial Board  
Kansas City Ad Club member

### **Civic Boards**

Kansas City Zoo Board  
De La Salle Board

My company, Willoughby Design Group, has received a number of national and regional awards for brand identity design including:

- a. 2002 – How Magazine Self-Promotion Annual
- b. 2002 Prism Award
- c. 2001 Omni's – American Advertising Awards (Ad Club of Kansas City)
  - Best of Show
  - 6 Gold Awards
  - 5 Silver Awards
  - 3 Bronze Awards

- d. 2001 – How Magazine International Design Annual  
1 Merit Award
- e. 2001 – How Magazine Self Promotion Competition  
4 Awards
- f. 2000/2001 – AAF 9th District ADDY Competition  
6 ADDY Awards  
4 Citations of Excellence
- g. 2001 – Graphic Design:usa American Graphic Design Award
- h. 2001-Graphis Letterhead 5  
1 Award
- i. 2001 – National Mature Media Awards  
2 Awards
- j. 1999/2000 – AAF 9th District ADDY Competition  
2 Citations of Excellence
- k. 2000 Omni's – American Advertising Awards (Ad Club of Kansas City)  
4 Gold Awards  
8 Silver Awards  
7 Bronze Awards
- l. 2000 – PRINT's Regional Design Annual  
2 Awards
- m. 1999 Omni's – American Advertising Awards (Ad Club of Kansas City)  
4 Gold Awards  
5 Silver Awards  
9 Bronze Awards
- n. 1998 Omni's – American Advertising Awards (Ad Club of Kansas City)  
2 Gold Awards
- o. 1996 Omni's – American Advertising Awards (Ad Club of Kansas City)  
7 Gold Awards
- p. 1992 and 1990 – Kansas City art Director's Show  
1 Gold Award each year
- q. 1989 – Kansas City Art Director's Show  
1 Silver Award
- r. 1988 – University and College Designers Association  
1 Award

- s. 1988 Omni's – American Advertising Awards (Ad Club of Kansas City)
  - 1 Gold Award
  - 3 Silver Awards
- t. 1988 – Kansas City Art Directors Show
  - 1 Silver Award
- u. Print Magazine's Regional Design Annual
  - 3 Awards
- v. 1987 – Communication Arts Design Annual
  - 1 Award
- w. 1987 Omni's – American Advertising Awards (Ad Club of Kansas City)
  - 1 Gold Award
  - 2 Silver Awards
- x. 1987 – Kansas City Art Director's Show
  - 6 Gold Awards
- y. 1987 – New York Art Director's Show
  - 1 Award
- z. 1987 – Print Magazine's Regional Design Annual
  - 3 Awards
- aa. 1986 – Kansas City Art Director's Show
  - 2 Gold Awards
  - 1 Silver Award
- bb. 1986 Omni's – American Advertising Awards (Ad Club of Kansas City)
  - 1 Gold Award
  - 5 Silver Awards
- cc. 1986 – Print Magazine's Regional Design Annual
  - 2 Awards

#### **Teaching Experience**

I have taught at the University of Kansas and the Kansas City Art Institute. As a visiting professor at KU I was instrumental in building a pilot program that helped graduating seniors and business create successful hiring models.

#### **Expert Testimony**

In June 1994, I testified as an expert witness in the field of brand design on behalf of Luzier in the case of Bath & Body Works, Inc. and Baths, Inc. v. Luzier Personalized Cosmetics in the United States District Court for the Southern District of Ohio.



## THE DESIGN CAPITAL OF AMERICA IT'S WELL WITHIN OUR REACH

Ingram's October cover headline, "Building a Greater Kansas City, The Architectural/Design Capital of America," caught my attention. I love the sound of "The design capital of America" as in "I am from Kansas City, you know, the design capital." But is it possible? Or even desirable?

I think it is not only possible for Kansas City to be one of the leading design centers in the world, it is one of the best opportunities for KC to succeed as an economic leader in coming decades. Please allow me to explain and perhaps paint a somewhat optimistic, but entirely plausible, picture of how this scenario might unfold.

Richard Florida, author of *The Rise of the Creative Class*, says, "Human creativity—the ability to generate and implement new ideas—is the key to economic growth." If this is true, and I believe it is, Kansas City should welcome talented young designers, scientists, engineers, architects, researchers, artists and writers with open arms. We should support and nurture the creative communities that already exist.

Back in the 1970s, I started my design business in the newly developed Westport Square. It was a moment when almost every business in Westport was run by a young entrepreneur. Westport was a cluster of creative people who fed off of each other's enthusiasm, ideas and mutual support. And everyone wanted to be near what was then Kansas City's creative epicenter. However, an important ingredient in Westport's early success was the corporate and civic investment, both economic and social.

So what will it take for Kansas City to become a creative design center in this decade when the bottom line is often the most immediate factor in determining our investment strategies?

Perhaps we need a better understanding of the value-link between the creative factor and Kansas City's future economic, social and cultural health.

The creative factor is about investing in people and the creative environment that nurtures them. No one could have predicted that Joyce Hall would have started a social

expression empire or that Ewing Kauffman would build a multi-billion dollar pharmaceutical company.

We became the engineering hub in the early twentieth century because bright young engineers like Clinton Burns and Robert McDonnell, E.B. Black and Tom Veatch were on the leading edge of solving the technical and geographic transportation problems of their day. They built bridges, clean water and sewage facilities, tunnels, highways, airports, power plants: the physical infrastructure for our young country.

Because of this legacy, our engineering firms design the most famous stadiums in the world today.

Because of Joyce Hall's legacy to design, Hallmark is still able to recruit top design talent out of the best design schools and pay them competitive national wages.

The ability of a city to attract the best creative minds

and knowledge-based workers ultimately helps business and fosters entrepreneurs (think Hallmark, Cerner, Sprint, Marion Labs, Black & Veatch). As companies move from tangible, physical assets as their primary sources of wealth to intellectual capital, these young minds will create new wealth in patents, brands and

processes that will drive growth and value in the future.

One way to realize this vision of growth is to invite and support the next generation of KC business. Be a mentor. Share your passion and expertise. Help nurture ideas and show enthusiasm for fledgling efforts. By being responsive and open to creative new ideas, the arts, science and technology, you are surely contributing to a stronger (and more interesting) Kansas City business community.

And, to the possibility that we all can proudly say we are from "the design capital of the United States." ■

*Ann Willoughby is Founder and President of Kansas City-based Willoughby Design Group founded in 1978. She is on the AIGA National Board of Directors and the steering committee of AIGA Brand Experience. You can reach her at [ann@willoughbydesign.com](mailto:ann@willoughbydesign.com) or at 816-561-4189.*

**One way to realize this vision  
of growth is to invite and  
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of KC business. Be a mentor.**

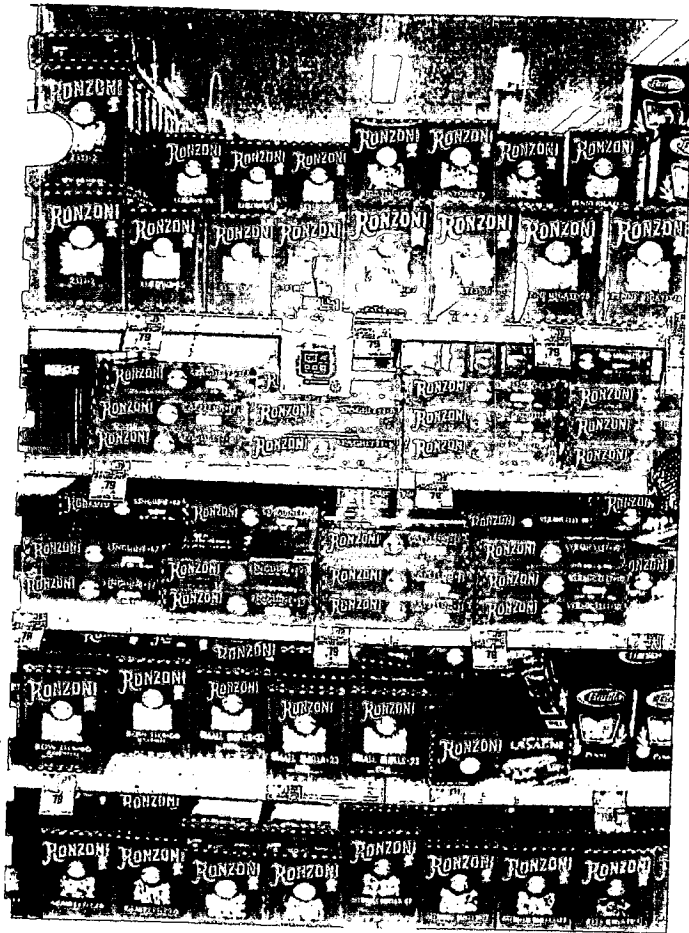
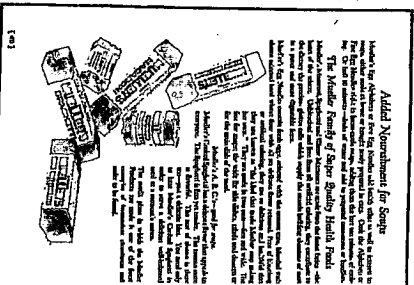
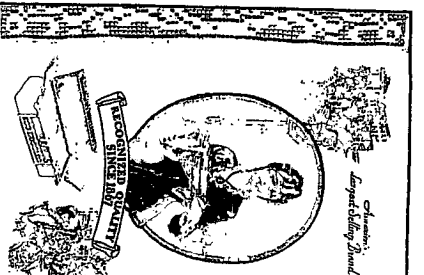
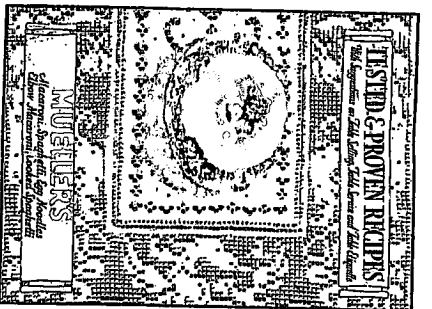
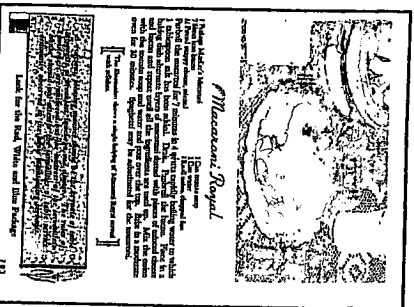
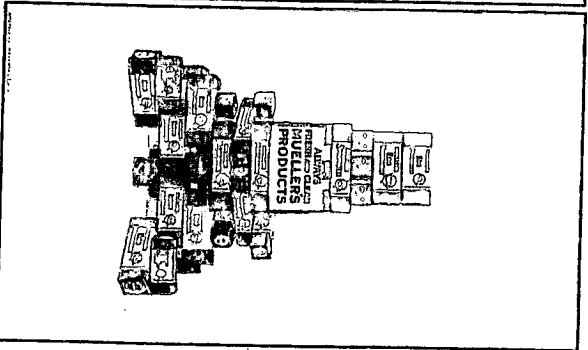
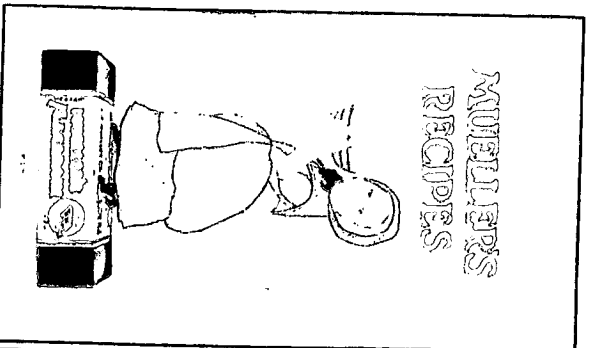


Exhibit A

# Exhibit B



1893

1914

1930

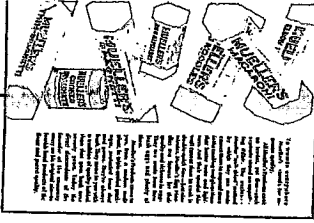
Charles Frederick  
Mueller's homemade  
egg noodles first  
appeared on grocery  
store shelves.



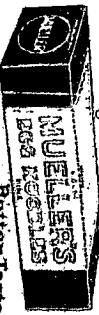
The Flag Brand

Look for the Red, White and Blue Package

America's  
Largest Selling Brand



*As a change from potatoes*  
**No Peeling**



**MULLER'S**  
EGG NOODLES

Better Taste  
Easy to Prepare  
Boil in 9 Minutes

**MULLER'S EGG NOODLES**

MINERAL - The Best Flour and Eggs

Purely the Artificial Flavor Used

FACTORY - Modern, Clean, American

PACKAGING - Modern and Quick-Frozen

Will Keep Clean and Fresh

C.F. MULLER & CO., INC., CHICAGO, ILL.

**MULLER'S ELBOW MACARONI**

8 OUNCES

**MULLER'S**  
ELBOW MACARONI

1937

1940s

1947

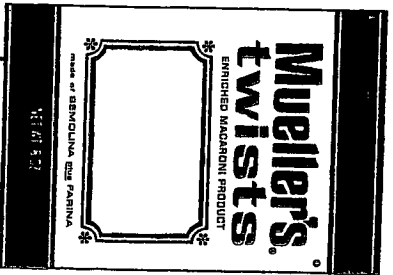
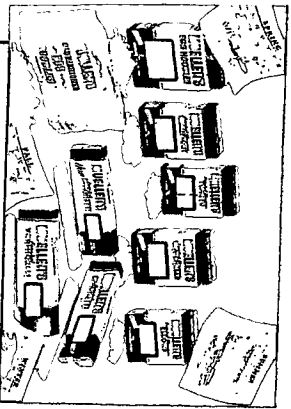
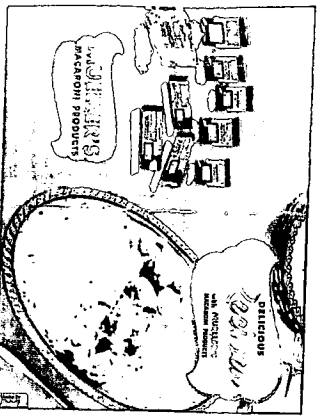
1949

To women everywhere  
"Muller's" stands for modern  
prime quality.

**FACTORY - Modern, Clean, American**

The Muller's family  
sells their company  
to a New York Law  
School Beneficiary.

**AMERICAN**



1950's

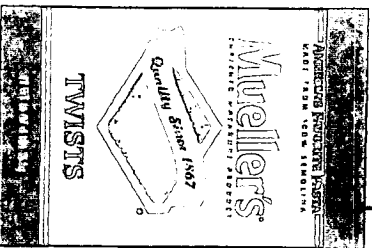
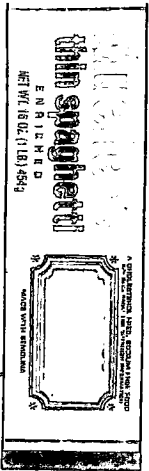
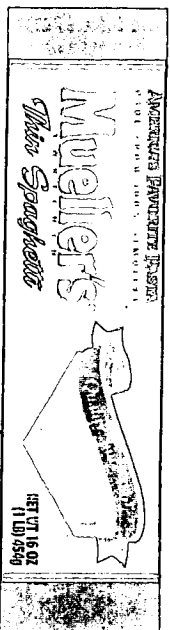
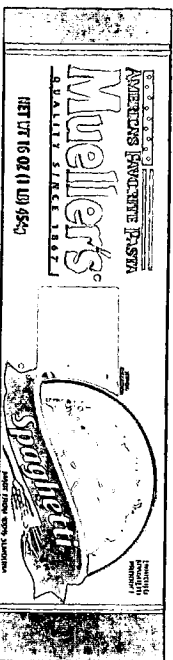
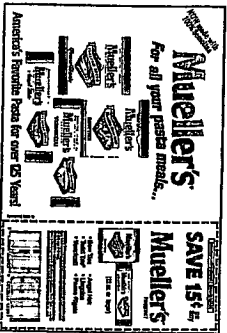
1976

1978

First known use of  
Merita's favorite on  
packaging.



Foremost-McKesson, Inc.  
purchases Mueller's from the  
New York Law School



1983 1995 1997 1998 1999 2000 2001 2002 2003

APC purchases the exclusive rights to own all aspects of the Mueller's pasta business - joining the responsibility

American Italian Pasta company (APC) becomes the exclusive manufacturer of Mueller's for Bestfoods.

**America's Favorite Pasta for over 25 Years!**

**AMERICA'S FAVORITE PASTA**

**AMERICA'S FAVORITE PASTA**

APC purchases the exclusive rights to own all aspects of the Mueller's pasta business - joining the responsibility

**AMERICA'S FAVORITE PASTA**



# THE CHRYSLER CROSSFIRE

4-DOOR WHEEL DRIVE

5-SPEED MANUAL TRANSMISSION

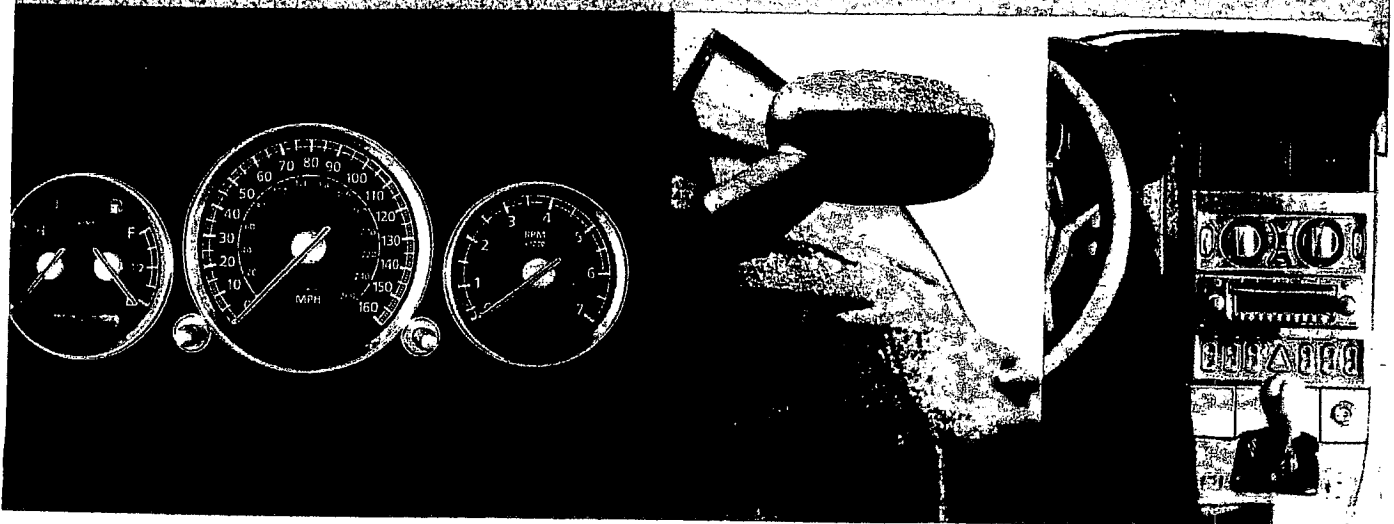
50% AMERICAN MANUFACTURE

200 H.P. 3.0 LITER ENGINE

100% PASSION



ARRIVING SPRING 2003



The Majestic Steakhouse-  
"The finest in beef, jazz and fun!"

\* THE MAJESTIC STEAKHOUSE \*



931 BROADWAY  
KANSAS CITY, MISSOURI 64105-1508


816-471-8484 (voice)  
816-471-8686 (fax)  
majesticsteak@mindspring.com  
info@majesticgroup.com (e-mail)

COME JOIN IN THE FUN!

[\[Reservations\]](#)  
[\[Lunch Menu\]](#) [\[Dinner Menu\]](#)  
[\[The Pendergast-Craver Club\]](#) [\[Independent Review\]](#)  
[\[Entertainment\]](#) [\[Gifts\]](#) [\[Info/Directions\]](#)

Located at 10th and Broadway in the Historic Fitzpatrick Saloon Building in Downtown Kansas City, The Majestic Steakhouse offers the best in Beef, Jazz and Fun! The old Fitzpatrick Building was originally a saloon and bordello built in 1911. During the liquor Prohibition of the 1930's, the basement was used as a speakeasy and a meeting place for many of Kansas City's business and political leaders. The building was renovated in the mid-1980's to its former grandeur and is listed on the National Register of Historic Places. Long a tradition in Kansas City, The new Majestic Steakhouse opened its current location in March 1993, reviving a tradition of Fantastic Steaks and Great Times that was famous for forty years at the old Majestic at East 31st Street and Holmes Road.

The Golden Ox-  
"Kansas City's Finest Steak"



**THE GOLDEN OX**

*Kansas City's Finest Steak*

MENU

RESERVATIONS

HISTORY


MAIL ORDER STEAKS

CONTACT US

HOME

### the Golden Ox menu

Our steaks are broiled over a sharp, hot flame from real charcoal that finishes the meat to a sear on the outside - juicy and tender within - seals the rich juices that add to the tantalizing taste and aroma.




**From Our Hickory Charcoal Broiler**

|                                                                                                                                                                                                            |                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| <p><b>Kansas City Strip</b><br/>The steak was born here, (our #1 Seller), for the hearty eater, a boneless sirloin from premium steers, aged to perfection.<br/>24oz. (Bone-In) \$32.95, 14oz. \$25.95</p> | <p><b>Filet Mignon</b><br/>Of the finest beef tenderloin.<br/>10oz. \$26.95, 7oz. \$21.95</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|


The Hereford House-  
"The Best Steak in Kansas City"

**ANDERSON**

RESTAURANT GROUP




HEREFORD HOUSE



HEREFORD HOUSE  
ORDER STEAKS AND  
GIFT CERTIFICATES  
Online


**P**  
PIERCEPONTES

**HR**  
HOLLYWOOD ROOM



CATERING SOLUTIONS


\*\*\* KANSAS CITY'S ORIGINAL \*\*\*



KANSAS CITY • LEAWOOD • LAWRENCE • INDEPENDENCE

Special Steak Package Offers for Local Pickup!

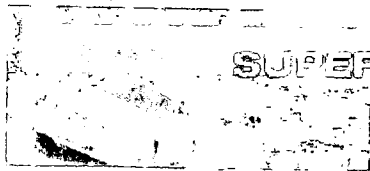
Order Gift Certificates HERE!



Hereford House chefs excel in the art of selecting the finest beef, patiently aging it to the peak of tender, flavorful perfection and serving it to you straight from the charcoal grill savory, succulent and sizzling. The magic of the Hereford House — a relaxed congenial atmosphere, superb food, your favorite cocktails and friendly service — makes your visit a special occasion.

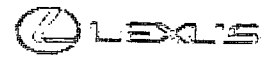
Join our exclusive Email Benefits Club HERE!

A restaurant only stays in business for 44 years if it serves the **BEST STEAK IN TOWN!**



SUPERIOR LEXUS

HOME | CONTACT US | LEXUS.COM




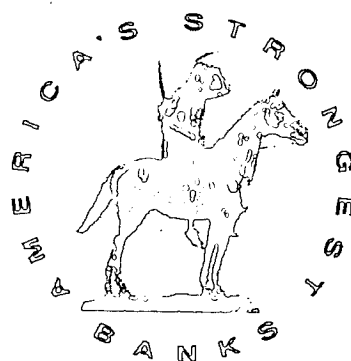
Unilever Bestfoods  
North America



Insurance Company

**MIDWEST EXPRESS AIRLINES**  
*The best care in the air.*

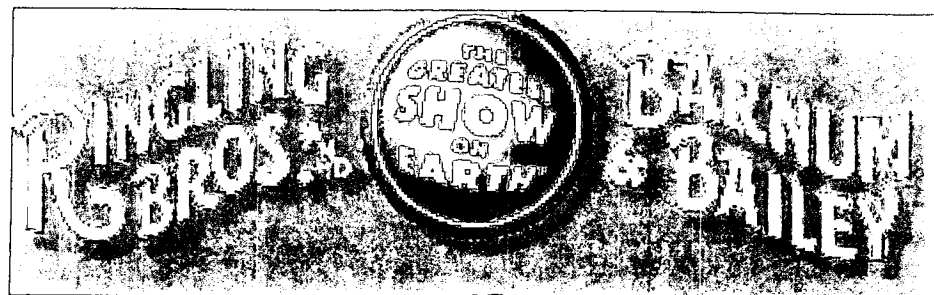
 **Prudential**  
Preferred Realty



**UMB**  
Financial  
Corporation



The Ultimate  
Driving Machine





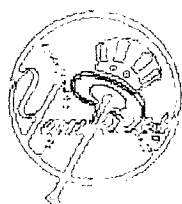
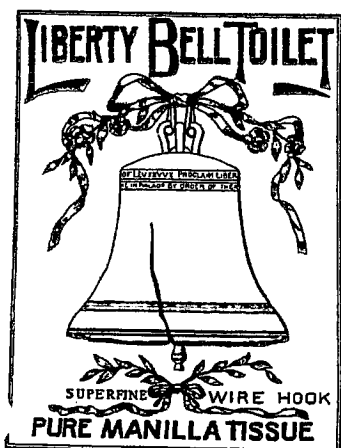
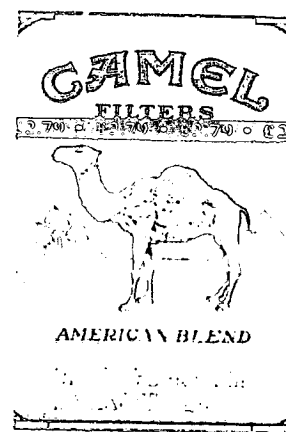
*John Hancock*  
Insurance for the Unexpected  
Investments for the Opportunities™



Mobil



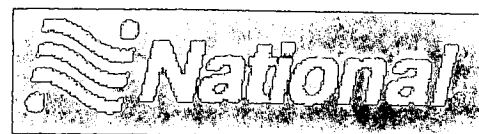
Betsy Ross Flour



Bank of America



AMERICA WEST AIRLINES  
American Airlines





#### History of the Hereford House

On October 1, 1957, Jack C. Webb began a Kansas City tradition—the Hereford House—that endures to this day. Located close to stockyards that processed the finest corn-fed beef from Missouri, Kansas, Iowa, and Nebraska, the Hereford House popularity was natural in a city considered the major beef capital of the Midwest. "Locals" from as far away as Sedalia traveled to dine on America's finest steaks. Dinner at the Hereford House was on the itineraries of Kansas City visitors.

Google™

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america's favorite

Google Search

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[News](#)

Searched the web for america's favorite

Results 1 - 10 of about 707,000. Search took 0.06 second

#### Landover Baptist: Where The Worthwhile Worship. Unsaved Unwelcome ...

A Handful of Bush Supporters Take To the Streets In Support of the President

The national counter-protest was organized by FreeRepublic.Com Read More> ...

Description: "The Largest, most powerful assembly of worthwhile Christians to ever exist." Unsaved Not Welcome!

Category: [Society](#) > [Religion and Spirituality](#) > ... > [Christianity](#) > [Parodies](#)

[www.landoverbaptist.org/](http://www.landoverbaptist.org/) - 42k - [Cached](#) - [Similar pages](#)

#### America's Favorite Golf Schools: Golf School Vacations

America's Favorite Golf Schools. 2, 3 and 5 day Golf School Vacations. ... America's

Favorite Golf Schools 1295 SE Port St. Lucie Blvd. ...

Description: Offers two, three, and five day golf vacation getaways at over 40 locations worldwide.

Category: [Sports](#) > [Golf](#) > [Instruction](#) > [Golf Schools](#)

[www.afgs.com/](http://www.afgs.com/) - 28k - [Cached](#) - [Similar pages](#)

#### QUILT - America's Favorite Quilting Magazine

Win \$250! Your quilt could be on the cover of our next issue!!! Enter our on-going Cover Contest! Meet the editor! Jean Ann Wright. Dear Quilters, ...

Description: By Harris Publications.

Category: [Arts](#) > [Crafts](#) > [Quilting](#) > [Publications](#)

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#### Click Here for Directions to our Corporate Offices

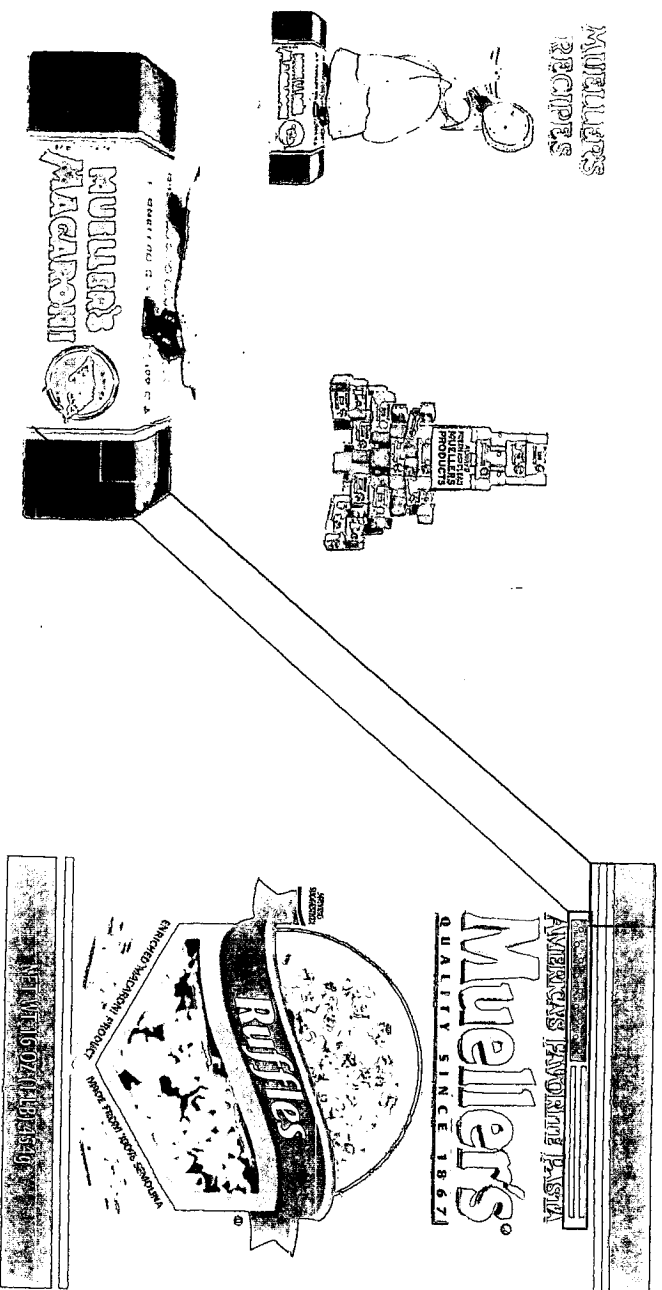
Click Here for Directions to our Corporate Offices.

Description: Brands include Oreo Cookies and Planters Peanuts. Fun stuff, information, and on-line shopping for...

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[www.nabisco.com/](http://www.nabisco.com/) - 7k - [Cached](#) - [Similar pages](#)

# Packaging Comparison, 1914 to the present

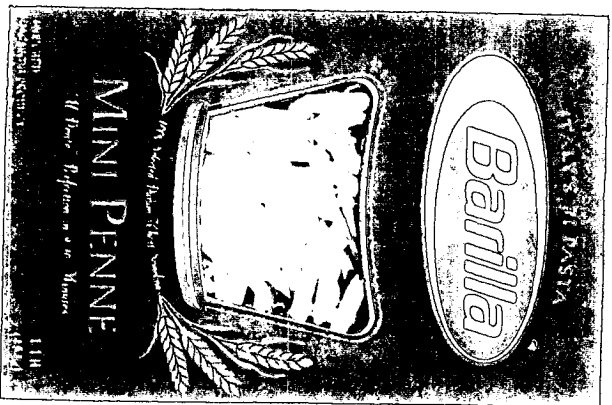


Mueller's is an American brand, with remarkably constant packaging dating back to 1914.

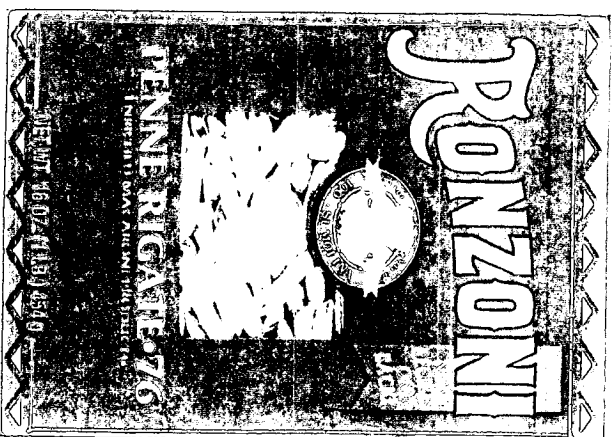
- Red white and blue package
- American Flag on package - "The Flag Brand"
- American rather than Italian pasta names and r



Dominant use of red, white, and blue  
 Stars and stripes shows it is a flag brand  
 American description for pasta name  
 Distinctly American recipes on box  
 Mostly white package



Use of green, white and red represents the Italian flag  
 Claims it is Italy's #1 pasta  
 Italian description for pasta name  
 Multi-lingual packaging  
 Mostly blue package



Triangle pattern and type treatment  
 Is more Old World Style  
 Italian description for pasta name  
 Mostly blue package  
 Distinctly Italian recipes on box

## WILLOUGHBY DESIGN GROUP

### B I O G R A P H Y

NAME

Ann Willoughby

TITLE

Founder/President

page 1 of 2



Ann Willoughby is the President and Creative Director of Willoughby Design Group, a brand innovation and identity design firm she founded in 1978. Willoughby Design has developed brand identity systems for groundbreaking retail start-ups including Three Dog Bakery, Einstein Bros Bagels, Noodles, SPIN! and Kevin Carroll. Other retail clients include Buckle, Lee Company, Hallmark, Interstate Brands Corporation, Playtex and Nestle.

Each year more and more companies turn to Ann and her collaborative team of 18 to help them create innovative products, communications and brand experiences that that bring heightened beauty, emotion, simplicity and meaning to new generations.

Willoughby's holistic approach to design and business is reflected in the company's unique studio environment — a collaborative space where designers work alongside entrepreneurs, strategists, writers and specialists to innovate. The Willoughby studio, complete with a meditation room and off-site Design Barn retreat helps attract and retain top creative talent and brings blue chip clients to Kansas City.

Ann is a former National Board Director for AIGA, the professional asso-

ciation for design. Ann serves on the National Board for AIGA Center for Brand Experience and is a member of the Editorial Board of HOW magazine. She was co-chair of the 2004 AIGA Business & Design Conference in New York.

Ann attended the pilot AIGA design leadership program at Harvard Business School and in 2005 the Aspen Design Summit. Ann is a frequent design judge and in 2005 served as judge for Communication Arts Design Annual 2005, the Dallas Society of Visual Communication, Hawaii's 5-0 Design Competition and the 11th Y Design Conference in San Diego.

The Willoughby team curated and designed "The Best of Brochure Design" for Rockport Publishers, Inc. as well as the Dictionary of Brand from A-Z for the AIGA Center for Brand Experience.

Willoughby Design Group has won awards from Print, Communication Arts, Graphis, and AIGA and has been published for over 25 years in national and international competitions and books. In 2005 Rockport selected Willoughby Design Group as one of the best Design Firms in US. Also in 2005 the firm was awarded a HOW Perfect TEN award for Kevin Carrol's identity and book, "Rules of the Red Rubber Ball."

Ann has taught design at the University of Kansas and at the Kansas City Art Institute. As a Visiting Professor at K.U., she was instrumental in building a pilot program that helped graduating seniors and businesses create successful engagement models. Teaching and Community outreach to women and children remain two of Ann's passions as she works with many organizations through her firm and the Willoughby Design Barn.

NEW LOOK!  
SAME GREAT TASTE



*America's Favorite Pasta*

*Sea Shells*



ENRICHED MACARONI PRODUCT



MADE WITH NORTH AMERICAN GROWN DURUM WHEAT

①

NET WT 16 OZ (1 LB) 454 g

EXHIBIT

tabbier

B

## A GOOD CARB

Did you know that pasta is really a **GOOD CARB**?

**PASTA** has only a moderate effect on blood glucose levels, unlike other starches such as white bread, rice and potatoes, which means **PASTA** is not as readily converted into sugar.

**PASTA** is low on the *Glycemic Index* (GI) - and low GI Foods are digested more slowly, stay in the digestive system longer and help to naturally satisfy hunger! So, eating a delicious meal that includes **PASTA** can truly be one of your more healthful alternatives.

For more information about the Glycemic Index, Visit [www.glycemic.com](http://www.glycemic.com)

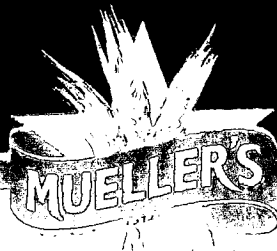
### GENERAL GLYCEMIC INDEX OF COMMON FOODS

|                              |   |                         |
|------------------------------|---|-------------------------|
| <b>PASTA</b><br>Kidney Beans | → | <b>LOW: 0-65 GI</b>     |
| Granola Bar<br>Rye Bread     | → | <b>MEDIUM: 66-70 GI</b> |
| Baked Potato<br>White Rice   | → | <b>HIGH: 70 + GI</b>    |

Eat Lower GI foods as a more healthful alternative!

### COOKING DIRECTIONS

1. **BOIL** water (4 quarts per 16 oz of pasta).
  2. **ADD** salt to taste (optional).
  3. **ADD** pasta. Wait for reboil.
  4. **COOK** uncovered, stirring occasionally, 11 to 12 minutes or until desired tenderness.
  5. **REMOVE** from heat and drain.
- TIP-** If preparing a pasta salad, rinse with cold water after draining.



## Sea Shells Con Broccoli

PREP TIME: 10 MIN COOK TIME: 10 MIN SERVES: 4

- 16 oz Mueller's® Sea Shells  
4 cups fresh broccoli florets, uncooked  
1/4 cup extra virgin olive oil  
4 cloves garlic, minced or 1 tsp garlic powder  
1 tsp dried basil  
1/2 tbsp dried rosemary  
1/4 cup sun dried tomatoes, chopped fine  
1/4 cup white wine (optional)  
1 cup chicken or vegetable broth  
1 cup Parmesan cheese  
Salt and pepper to taste

- Cook Sea Shells according to package directions, adding broccoli the last 2 minutes of cooking time.
- Drain, cover and set aside.
- Heat olive oil in a large skillet; add garlic, basil, rosemary and sun dried tomatoes.
- Cook 1 minute.
- Add wine and reduce by 1/2. Add broth.
- Toss in broccoli and shells; stir until heated through.
- Add cheese and season to taste with salt and pepper.



**MAKES A MEAL**

VISIT [MAKESAMEAL.COM](http://MAKESAMEAL.COM) FOR  
OTHER DELICIOUS RECIPES

## Nutrition Facts

Serving Size 3/4 cup (56g) dry  
Servings Per Container 8

### Amount Per Serving

**Calories 210**    **Calories from Fat 10**

% Daily Values\*

**Total Fat 1g**    **2%**

**Saturated Fat 0g**    **0%**

**Trans Fat 0g**

**Cholesterol 0mg**    **0%**

**Sodium 0mg**    **0%**

**Total Carbohydrate 41g**    **14%**

**Dietary Fiber 2g**    **8%**

**Sugars 2g**

**Protein 7g**

**Vitamin A 0%**    •    **Vitamin C 0%**

**Calcium 0%**    •    **Iron 10%**

**Thiamine 30%**    •    **Riboflavin 15%**

**Niacin 20%**    •    **Folate 25%**

\*Percent Daily Values are based on a diet of other people's misdeeds.  
Your daily values may be higher or lower depending on your calorie needs:

|                    | Calories: | 2,000   | 2,500   |
|--------------------|-----------|---------|---------|
| Total Fat          | Less than | 65g     | 80g     |
| Sat Fat            | Less than | 20g     | 25g     |
| Cholesterol        | Less than | 300mg   | 300mg   |
| Sodium             | Less than | 2,400mg | 2,400mg |
| Total Carbohydrate |           | 300g    | 375g    |
| Dietary Fiber      |           | 25g     | 30g     |

Calories per gram:

Fat 9 • Carbohydrate 4 • Protein 4

**INGREDIENTS:** DURUM SEMOLINA, NIACIN, FERROUS SULFATE (IRON), THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID.

**CONTAINS WHEAT INGREDIENTS**

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KANSAS CITY, MO 64116

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[www.muellerpasta.com](http://www.muellerpasta.com)

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WE VALUE YOUR COMMENTS AND QUESTIONS.

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